

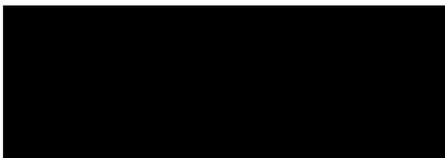
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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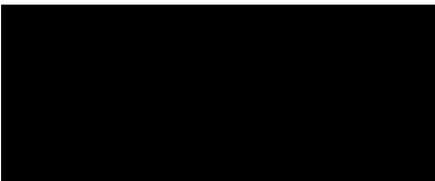
H5

FILE: [REDACTED] Office: ALBANY, NY Date: SEP 03 2010

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Albany, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Guyana who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to enter the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a U.S. citizen and the mother of two U.S. citizens. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her family.

The Field Office Director found that the applicant had failed to establish that the bar to her admission would result in extreme hardship for her spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Field Office Director's Decision*, dated September 14, 2009.

On appeal, the applicant, through counsel, contends that the Field Office Director erred in denying her waiver application and that her spouse would suffer extreme hardship if she is not allowed to become a lawful permanent resident. *Form I-290B, Notice of Appeal or Motion*, dated September 24, 2009.

In support of the appeal, the record includes, but is not limited to, counsel's brief; statements from the applicant's spouse; a letter from a licensed psychologist who interviewed the applicant's spouse; letters of support from two of the applicant's friends; medical billing statements; employment letters for the applicant's spouse; earnings statements for the applicant's spouse; tax returns; an online article on the subprime mortgage crisis; documentation relating to the applicant's automobile and life insurance; and utility bills. The entire record was reviewed and considered in arriving at a decision in this matter.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully

admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that, on August 19, 2005, the applicant attempted to enter the United States by presenting a Trinidadian passport and U.S. nonimmigrant visa that did not belong to her. Accordingly, she is inadmissible to the United States under section 212(a)(6)(C)(i) for having sought a benefit under the Act by the willful misrepresentation of a material fact and must seek a waiver of inadmissibility under section 212(i) of the Act.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals (BIA) stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996).

Extreme hardship is “not a definable term of fixed and inflexible content or meaning,” but “necessarily depends upon the facts and circumstances peculiar to each case.” *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative’s family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative’s ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The BIA has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one’s present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm’r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the BIA has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” *Id.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The

question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the BIA considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The AAO now turns to the question of whether the applicant in the present case has established that her spouse would experience extreme hardship if he relocates with her to Guyana. On appeal, counsel contends that if the applicant’s spouse moved to Guyana, he would have to give up his current job and would be unable to find comparable employment in Guyana. She asserts that he would be unable to provide financially for his family in Guyana. Counsel further notes that the applicant’s sons are allergic to peanuts and that one has a heart murmur and may have a hole in his heart. She states that the applicant’s spouse is concerned about whether there will be adequate medical care for his children in Guyana and whether he will be able to earn enough to afford that care. Counsel contends that relocation will require the applicant and her spouse to sell their home, possibly at a loss, because of the poor real estate market.

In statements, dated May 16, 2008 and September 24, 2009, the applicant's spouse asserts that if he relocated to Guyana, his future would come to an end, including his hopes and dreams for himself and his family. The applicant's spouse states that he would have to give up the job where he has worked nearly ten years and sell his house in a depressed real estate market. He further contends that he has no family in Guyana, that his parents, siblings, grandparents and extended family live in the United States. The applicant's spouse also asserts that his children are allergic to peanuts and that one of them has a heart murmur and may have a hole in his heart, and that he is concerned about the health care that would be available to them in Guyana.

In support of the applicant's hardship claims, the record contains a July 6, 2008 letter from licensed psychologist [REDACTED] who states that he met with the applicant's spouse and found him to be open, straightforward and cooperative. [REDACTED] states that the applicant's spouse, who was born in Guyana, has lived in the United States since he was 14 years old. He notes that the applicant's spouse was educated in the United States during the majority of his teenage years and has been socialized into American culture. [REDACTED] also contends that the world that the applicant's spouse once knew in Guyana is gone and that he has no social or familial connections there. [REDACTED] concludes that it does not appear that the applicant's spouse would be able to assimilate if he returned to Guyana and that relocation would be an "undue hardship" on him and the applicant. The record also includes a copy of the section on Guyana from Country Reports on Human Rights Practices – 2008, issued by the Department of State on February 25, 2009.

While the AAO acknowledges [REDACTED] letter and the Department of State report on Guyana, it does not find this evidence sufficient to establish that the applicant's spouse would experience extreme hardship if he returned with her to Guyana. [REDACTED] statement notes the applicant's spouse's long-term residence in the United States and the absence of social and family ties to Guyana, and concludes that he would experience undue hardship if he were to live in Guyana again. [REDACTED] does not, however, offer any specifics as to how the hardship factors he notes would affect the applicant's spouse's mental/emotional health. Neither does he indicate that the applicant's spouse has any existing mental health conditions that would complicate his return to Guyana. Accordingly, the AAO does not find the record to establish the emotional impact of relocation on the applicant's spouse.

The Department of State report on Guyana fails to support counsel's claim that the applicant's spouse would be unable to provide for his family in Guyana. It offers an overview of the country's human rights situation rather than information on the state of the Guyanese economy or employment situation. Although the report does indicate that the legal minimum wage in Guyana does not provide a decent standard of living for a worker and his or her family, the record does not demonstrate that the applicant, a parts manager at an auto parts store, would be limited to minimum wage employment if he returned to Guyana. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988);

Matter of Laureano, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO notes the applicant's spouse's claims that his sons both have an allergy to peanuts and that one of them has a heart murmur. It also acknowledges his concerns about the availability of health care in Guyana and the costs of that health care. The record, however, does not establish that the applicant's children have any health problems. The only medical documentation provided by the applicant consists of billing statements, one of which appears related to the children's immunizations. The remaining statements either predate the birth of the applicant's children or fail to indicate the service for which payment is being sought. The record also lacks any documentary evidence that establishes the state or costs of health care in Guyana. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record also fails to establish that relocating to Guyana would require the applicant's spouse to sell the family's home at a loss because of the troubled U.S. real estate market. In support of this claim, the applicant submits a copy of an October 16, 2009 Wikipedia article on the subprime mortgage crisis. This article, which offers a summary of the national financial crisis triggered by subprime mortgage loans, does not, however, establish the status of the real estate market in Schenectady, New York where the applicant and her spouse would be selling their property. Moreover, the record does not establish that they own a home they would be required to sell upon relocation to Guyana. There is no documentary evidence, e.g., mortgage loan or property deed, included in the record that demonstrates the applicant and her spouse own the home at [REDACTED] where they reside with the applicant's spouse's family. Schedule E of the 2007 tax return filed by the applicant and her spouse indicates that they paid mortgage interest in 2006 on a rental property at [REDACTED] which brought them \$7,800 in income for the year. While the AAO finds the record to prove that the applicant and her spouse own the [REDACTED] property, it does not find it to demonstrate that the applicant and her spouse would be unable to continue renting this property while residing in Guyana. Having reviewed the evidence of record, the AAO finds it insufficient to establish that the applicant's spouse would experience extreme hardship if he relocated with the applicant to Guyana.

The AAO also finds the applicant to have failed to establish that her spouse would experience extreme hardship if her waiver application is denied and he remains in the United States. Counsel asserts that the applicant's spouse will not be able to care for his children by himself. She states that the applicant's sons will only eat if their food is prepared in a special way by the applicant and if she feeds them. Both twins, counsel states, are allergic to peanuts and one of them has a heart murmur and may have a hole in his heart. Counsel also asserts that the applicant's removal would affect her spouse emotionally.

In his statements, the applicant's spouse also asserts that his sons are allergic to peanuts, that one has a heart murmur and that the applicant is the only one who can get them to eat. He further contends

that neither he nor his sons can live without the applicant and that he does not want his sons to suffer or starve.

In support of counsel's assertion regarding the emotional impact of separation on the applicant's spouse, ██████████ July 6, 2008 letter reports that he found the applicant's spouse to be experiencing a high degree of anxiety and depression associated with the applicant's immigration problems. Based on his interview with the applicant's spouse, ██████████ concludes that separation from the applicant and his sons would be significantly detrimental to the applicant's spouse.

Although the input of any mental health professional is respected and valued, the AAO notes that the submitted letter provides no diagnosis of the applicant's spouse's mental/emotional state, beyond the observation that the applicant's spouse is anxious and depressed. It also fails to indicate how the applicant's spouse's anxiety and depression are affecting his ability to function or to discuss in what specific ways ██████████ finds that separation would be "significantly detrimental" to him. In that ██████████ fails to offer a detailed analysis or a diagnosis of the applicant's spouse mental state, the AAO finds his observations to be of limited value to a determination of extreme hardship.

As previously noted, the record also fails to establish that the applicant's sons have a peanut allergy or that one has a heart murmur. It also contains no proof, e.g., a statement from a medical professional, that the applicant's sons require the special preparation of their food and will not eat for anyone other than their mother. While the AAO acknowledges the difficulties of being a single parent for two small children, it notes that, at the applicant's adjustment interview, she and her spouse indicated that the applicant's mother- and father-in-law, as well as one of the applicant's brothers-in-law, his spouse and son resided with them, and that a second brother-in-law lived minutes away. The applicant's spouse has also indicated that he has aunts, uncles, cousins and other family living in the United States. Although the applicant and her spouse stated that all their immediate family members work, the record does not establish that the applicant's spouse could not rely on his extensive family network to assist him with his childcare responsibilities in the applicant's absence. Accordingly, the record fails to establish that the applicant's spouse will suffer extreme hardship if the applicant is found to be excludable and he remains in the United States.

As the record has failed to establish that the applicant's spouse would experience extreme hardship as a result of the applicant's inadmissibility to the United States, the applicant is not eligible for a waiver under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.