

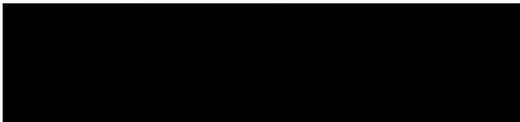
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

**U.S. Citizenship
and Immigration
Services**



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Date: **AUG 11 2011**

Office:



FILE:



IN RE:

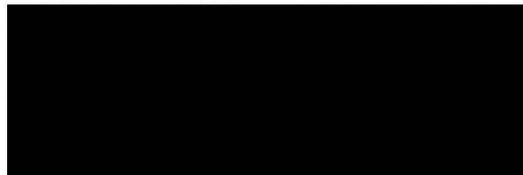
Applicant:



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.

Thank you,

Michael Shumway

for Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, [REDACTED] and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of [REDACTED] who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission into the United States by willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her United States citizen husband and daughter.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 7, 2011.

On appeal, counsel for the applicant contends that the applicant's husband will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, received April 11, 2011.

The record contains, but is not limited to: a brief from counsel; documentation relating to the applicant's and her husband's physical health, including evidence that the applicant has been diagnosed with breast cancer; a psychological evaluation of the applicant's husband; and reports on conditions in [REDACTED] including the aftermath of the recent earthquake and lack of cancer treatment services. The entire record was reviewed and considered in rendering this decision.

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

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, in pertinent part, 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 immigrant 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 October 2, 1994 the applicant attempted to enter the United States using a [REDACTED] passport with her photograph substituted for that of the true owner. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act

for seeking to procure admission into the United States by willful misrepresentation. The applicant does not contest her inadmissibility on appeal.

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 child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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 USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (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 Board 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 Board 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 Board 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 Board 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).

Upon review, the AAO finds that the applicant's husband will experience extreme hardship should the present application for a waiver be denied. The applicant has identified numerous challenges that her husband will face should he relocate to [REDACTED] or remain in the United States. It is evident that he will face considerable emotional difficulty should the applicant reside in [REDACTED] with or without him, due to her need for cancer treatment and the lack of services there. This circumstance constitutes an unusual hardship not commonly faced by the spouses of those deemed inadmissible.

The Department of Homeland Security (DHS) Secretary has determined that a designation of Temporary Protected Status (TPS) for [REDACTED] is warranted because of the devastating earthquake and aftershocks which occurred on January 12, 2010. This designation is ongoing and is presently scheduled for expiration or reevaluation on January 22, 2013. [REDACTED] in the United States are unable to return safely to their country. Even prior to the current catastrophe, [REDACTED] was subject to years of political and social turmoil and natural disasters. In a travel warning issued on January 20, 2011 the U.S. Department of State noted the critical crime level, cholera outbreak, frequent and violent disturbances in [REDACTED] and in provincial cities, lack of adequate medical facilities, and limited police protection. *U.S. Department of State, Travel Warning – [REDACTED]* January 20, 2011. Based on the designation of TPS for [REDACTED] and the disastrous conditions which have compounded an already unstable environment, and which will affect the country and people of [REDACTED] for years to come, the AAO finds that requiring the applicant's husband to join the applicant in [REDACTED] would result in extreme hardship.

For the same reasons, the AAO finds that the applicant's husband would also experience extreme hardship were he to remain in the United States without the applicant. This finding is based on the extreme emotional harm the applicant's husband will experience due to concern about the applicant's well-being and safety in [REDACTED] a concern that is beyond the common results of removal or inadmissibility.

Based on the foregoing, the applicant has established that denial of the present waiver application "would result in extreme hardship" to her husband, as required for a waiver under section 212(i)(1) of the Act.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. *See Matter of Cervantes-Gonzalez, supra*, at 12.

The negative factors in this case consist of the following:

The applicant attempted to enter the United States by making a willful misrepresentation, her true identity.

The positive factors in this case include:

The record does not reflect that the applicant has been convicted of a crime; the applicant's U.S. citizen husband and daughter would experience extreme hardship if she is prohibited from residing in the United States; and the applicant would endure significant hardship should she return to [REDACTED]

While the applicant's violation of U.S. immigration law cannot be condoned, the positive factors in this case outweigh the negative factor.

In proceedings regarding a waiver of grounds of inadmissibility under section 212(i)(I) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Mendez-Morales*, 21 I&N at 301 (finding that, in addition to establishing extreme hardship, an applicant must show that he or she merits a favorable exercise of discretion). In this case, the applicant has met her burden that she is eligible for a waiver and she merits approval of her application.

ORDER: The appeal is sustained.