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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**



PUBLIC COPY

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DATE: **DEC 13 2011**

Office: ALBANY, NEW YORK

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:

SELF-REPRESENTED

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 \$630. 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,

fr
Perry Rhew
Chief, Administrative Appeals Office

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

The record establishes that the applicant is a native and citizen of Guyana who procured entry to the United States in December 2002 by presenting a fraudulent passport. The applicant was thus 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 having procured entry into the United States by fraud or willful misrepresentation. On appeal, the applicant does not contest the field office director's finding of inadmissibility. Rather, 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 U.S. citizen parents.

The field office director noted that the applicant appeared to be claiming that her disabled sister would experience extreme hardship if she were removed from the United States. The field office director further referenced that siblings are not qualifying relatives for purposes of a waiver of inadmissibility under section 212(i) of the Act. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *Decision of the Field Office Director*, dated July 23, 2009.

In support of the appeal, the applicant submits the Form I-290B, Notice of Appeal, dated August 20, 2009 and additional documentation in regards to her sister's disability. On the Form I-290B, the applicant asserts that the hardship claimed was in relation to her U.S. citizen parents, who rely upon the applicant to assist with the care of their disabled daughter, the applicant's sister. *See Form I-290B*, dated August 20, 2009. The entire record was reviewed and considered in rendering this decision.

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 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...

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. The applicant's U.S. citizen parents are the only qualifying relatives in this case. Hardship to the applicant or her sister, Arlet, can be considered only insofar as it results in hardship to a qualifying relative. 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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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., Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant contends that her U.S. citizen parents will experience extreme hardship were they to remain in the United States while she relocates abroad as a result of her inadmissibility. In a declaration, she contends that she is primary caretaker for her 24-year old sister, who is disabled and unable to care for herself. The applicant asserts that her sister requires assistance and guidance in order to perform everyday duties such as dressing and showering and cannot be left by herself in the house. The applicant further explains that her parents work outside the home and as a result of their long work hours, there is no money left to pay for a salaried caretaker and thus, her parents need her to remain in the United States to provide support for [REDACTED]. The applicant notes that although her sister currently attends a rehabilitation program for part of the day, she is responsible for her before and after that program. Finally, the applicant explains that she helps with household chores such as cooking, cleaning, laundry and shopping. *Affidavit of [REDACTED]* dated July 20, 2006.

To begin, no documentation has been provided from the applicant's parents outlining the specific hardships they would experience were the applicant to relocate abroad. Moreover, no supporting documentation has been provided establishing the applicant's parents' work schedule and their income and expenses to establish that they are unable to afford a caretaker for their daughter should the applicant relocate abroad. In addition, no supporting documentation has been provided establishing the hardships the applicant's sister would experience were the applicant to relocate abroad, to further support the assertion that the applicant's parents will suffer hardship if the applicant were not physically present in the United States to help care for her sister on a daily basis. Finally, the record establishes that the applicant's sister is involved in Day Rehabilitation Services five days a week. *See Day Community Opportunities Program Group Day Habilitation Plan*, dated March 19, 2009. It has not been established that her schedule cannot be altered as needed if both of her parents are unable to be at home to care for her. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 AAO notes that the applicant's sister "does have alone time and staff can drop her off even if nobody else is home...." *Id.* at 3.

With respect to relocating abroad to reside with the applicant based on the denial of the applicant's waiver request, the record does not contain any information or evidence concerning potential hardship to the applicant's parents in Guyana. As such, it has not been established that the applicant's parents would experience extreme hardship if they relocated to Guyana, their native country, to reside with the applicant due to her inadmissibility.

The record, reviewed in its entirety, does not support a finding that the applicant's parents will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a son or daughter is removed from the United States or is refused admission. There is no documentation establishing that the applicant's parents' hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's parents' situation, the record does not establish that the hardships they would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.