

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H5



DATE: DEC 14 2011 OFFICE: SANTO DOMINGO

FILE: [REDACTED]

IN RE: APPLICANT: [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:

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,

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of the Dominican Republic who, in 1990 attempted to enter the United States using a United Kingdom passport which did not belong to her. She 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 having attempted to procure admission to the United States through fraud or misrepresentation. The applicant is the daughter of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative.¹ The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to join her U.S. Citizen mother in the United States.

The Field Office Director concluded the applicant failed to establish her qualifying relative would suffer extreme hardship if the waiver is not granted and denied the application accordingly. *See Decision of Field Office Director* dated August 13, 2009.

On appeal, the applicant, appearing without counsel, submits letters from physicians, copies of prescriptions, a letter from the applicant's uncle, evidence of permanent residence and naturalization, and a letter from the applicant's mother. In the mother's letter, the mother states she suffers from medical as well as psychological conditions which are exacerbated given the applicant's immigration issues. *Letter from applicant's mother*, May 8, 2009.

The record includes, but is not limited to, the documents listed above, additional letters from the applicant's mother, and evidence of birth, permanent residence, and citizenship. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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:

- (1) The [Secretary] may, in the discretion of the [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 [Secretary] that the refusal of admission to the United States of such

¹ It is noted the Form I-130 was approved on March 4, 1996 when the applicant's mother was a lawful permanent resident. Records reflect the applicant's mother became a U.S. Citizen on September 18, 2009.

immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

In the present case, the applicant admitted under oath that in 1990 she attempted to enter the United States at Puerto Rico by presenting a United Kingdom passport which did not belong to her to immigration officials. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant's qualifying relative is her U.S. Citizen mother.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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’s mother states: “I suffer [from] nerves and stress knowing that I don’t have my daughter by my side.” *Letter from applicant’s mother*, May 28, 2009. She explains she has “been separated from [her] daughter” since 1988, and she cannot see the applicant “as often as [she] wish[es] due to the lack of funding to travel.” *Id.* The applicant submits a letter from [REDACTED]. Therein, [REDACTED] indicates: “Please be advised that [REDACTED] is being treated at my office for the following conditions: Insomnia, severe depression, anxiety.” *Letter from [REDACTED] M.D.*, August 28, 2009. The applicant’s uncle, who is also the qualifying relative’s brother, submits: “I am a witness that my sister is suffering a lot [because] of the fact of being separated from her daughter, that is affecting her in every way, the entire family is watching after her, feeling bad for her depression, doesn’t eat, doesn’t sleep, and as the brother that spends more time with her, is also bringing worries to myself as my sister is not the same person anymore. My sister’s two other children are always claiming the fact of why their oldest sister doesn’t live together with them.” *Letter from [REDACTED]* September 1, 2009. The applicant’s mother confirms in another letter: “I am suffering from insomnia, I can’t concentrate sleeping... I have become a nervous person because of all the suffering I have during all these years. My (three) 3 minor children keep asking me when my daughter, their sister [REDACTED] will come to live together with us. The fact of no[t] having an answer for my children makes me cry and I [have] depression.” *Letter from applicant’s mother*, May 9, 2009.

Furthermore, the applicant’s mother contends she has “a very delicate health situation.” *Letter from applicant’s mother*, May 9, 2009. In support, the applicant submits a letter from [REDACTED]. [REDACTED] M.D. Therein, [REDACTED] opines:

██████████ has been a patient of ██████████ since year 1994. Since then she had three major surgeries. Year 1996 she became pregnant and was under ██████████ obstetrical care and he performed a [cesarean] section on ██████████. She became pregnant again [in] year 2002. She was under ██████████ obstetrical care and had a repeat [cesarean] section on ██████████. On that same day she also had a total abdominal hysterectomy due to fibroid uterus. On June 23, 2008 she [had] another procedure laparoscopic lysis of adhesions and removal of right adnexa. After so many surgeries she need[s] her daughter to come and help her raise her kids.

Letter from ██████████ M.D., August 21, 2009.

The AAO acknowledges the applicant's mother has had some medical conditions, some of which were related to her pregnancies, in the past. However, neither the letter from ██████████ nor the rest of the record contains an explanation from a medical services provider with details about the severity of the mother's current, complete medical condition and how it affects her quality of life to allow an assessment of the mother's medical needs and whether the applicant can assist with those needs. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed, or the nature and extent of any hardship the applicant's mother would suffer as a result of the applicant's inadmissibility.

The record contains a letter from ██████████ M.D., in which ██████████ indicates the applicant's mother suffers from "insomnia, severe depression, [and] anxiety" which the mother attributes to the applicant's absence. *Letter from ██████████ August 28, 2009.* Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation

of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See* *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). As such, the AAO cannot conclude that the record demonstrates the mother’s emotional or psychological hardship, given the current separation from the applicant, goes beyond that normally experienced by family members of inadmissible aliens.

While the AAO acknowledges that the applicant’s mother would face difficulties as a result of the applicant’s inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the medical, emotional or other impacts of separation on the applicant’s mother are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would experience extreme hardship given the separation.

Moreover, the applicant’s mother does not assert that she would experience extreme hardship if she were to relocate to the Dominican Republic to be with the applicant, nor is there any evidence of such hardship. Therefore, the AAO also cannot conclude the applicant’s mother would experience extreme hardship upon relocation to the Dominican Republic.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. Citizen mother as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for a 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.