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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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**U.S. Citizenship
and Immigration
Services**

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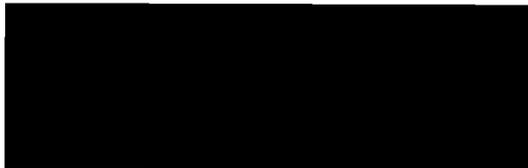
DATE: DEC 29 2011 OFFICE: PHILADELPHIA, PENNSYLVANIA

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,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Portugal 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 a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or 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.

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. See *Decision of the Field Office Director*, dated June 08, 2009.

On appeal, counsel asserts that the applicant's elderly mother would suffer hardship of an emotional, physical, medical, and economic nature if the waiver application is denied. See *Form I-290B*, Notice of Appeal or Motion, received July 10, 2009.

The record contains, but is not limited to: Form I-290B and Counsel's Brief; Form I-601 and Denial; Form I-485, Notice of Intent to Deny, and Denial; applicant's mother's hardship letter, and letter from her physician; applicant's statement; applicant's sister's letters; birth, marriage, and divorce records; applicant's sister and brother-in-law's tax and earnings records, real property records, and bank statements; 1987 Form W-2 Wage and Tax Statement for the applicant; two Forms I-130; and a 1981 Form I-140 Notice of Intent to Deny and Denial. The entire record was reviewed and considered in rendering this decision on the appeal.

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.

The record reflects that the applicant was found to have misrepresented his work experience on a labor certification application filed with the Department of Labor in 1979. The Field Office Director further found that the applicant misrepresented himself in March 2009 by checking the "no" box for Part 3, Question 10 of his *Form I-485*, Application to Register Permanent Residence or Adjust Status, and failing to correct the same during his adjustment of status interview. The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The applicant does not contest these findings on appeal.

Section 212(i) of the Act provides, in pertinent part:

- (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.

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 his children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's mother is the only 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-Morales*, 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.

In this case, the record reflects that the applicant’s mother is an 88-year-old native of Portugal and citizen of the United States. The applicant’s mother states that she was orphaned very young and separated from her siblings, and she lost her husband when her own children (the applicant and his sister), were very small. See *Hardship Letter*, undated. She states that she cherishes her family deeply and is so happy she has had the opportunity to immigrate to the U.S. and share so much of the lives of her children and grandchildren. *Id.* The applicant’s mother states that it would be extremely difficult for her to be separated from her son, both emotionally and financially. *Id.* She states that she wants to grow older in the company of both her children and die knowing that she raised them to love and depend on one another, and that she will have no peace knowing that her children have been separated after decades together in the United States. *Id.* The applicant states that while his mother is fairly independent, she requires attention and constant supervision for which he and his sister share responsibility. See *Applicant’s Statement*, undated. He states that he does not want his mother, in her twilight years, to be burdened with worrying about the separation of her children; for his sister to be solely responsible for his mother’s care; or for his small family to be heartbroken that he is so far away from their love and

care. *Id.* The 63-year-old applicant states: “We have always been a small and close family who rely on one another and I hope we can continue to do so as we grow old.” *Id.*

The applicant’s sister states that she, her husband, her children, the applicant, and their mother all live together in one home. See *Sister’s Letter*, undated. She states that the applicant has always helped her with the children, has always been an integral part of their family, and that their mother would be devastated if he was separated from them at this point in their lives. *Id.*

The applicant submits a *Physician’s Letter*, dated July 20, 2009. Therein [REDACTED] states that the applicant’s mother “is an elderly woman with many chronic illnesses including Alzheimer’s Dementia.” *Id.* [REDACTED] states that separation from the applicant will cause the applicant’s mental status to “drastically decline,” as he is her primary caregiver while the applicant’s sister is at work. *Id.* [REDACTED] asserts that the applicant’s mother would be negatively affected if placed in adult daycare as a result of the applicant’s removal. *Id.* While the record is unclear concerning the amount of financial assistance the applicant contributes to his mother’s care, the record shows that he is essential to her overall wellbeing.

The AAO has considered cumulatively all assertions of separation-related hardship including the very advanced age of the applicant’s mother; the emotional, physical, and medical implications to her; and the permanent nature of separation given these factors and the resulting unlikelihood she would be able to travel between the United States and Portugal or see her son again if he is removed. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant’s U.S. citizen mother would suffer extreme hardship if separated from the applicant by his removal to Portugal.

With regard to relocation, the applicant’s sister states that her mother derives so much happiness from taking part in the lives of both children, and that having to decide with which child to live and in which country would cause extreme hardship to their elderly mother. See *Sister’s Letter*, undated.

The AAO has considered cumulatively all assertions of hardship including the applicant’s mother’s very advanced age, the emotional, physical, medical, and economic implications of relocating to a country so far away, the permanent nature of the separation she would suffer from her daughter and grandchildren who are an essential part of her life, as well as separation from her ties to the community, her physician, and others in the United States. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant’s U.S. citizen mother would suffer extreme hardship if she were to relocate to Portugal to be with the applicant.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien’s undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief

in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives)

... *Id.* at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised.

The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in the present case include extreme hardship to the applicant's 88-year-old U.S. citizen mother as a result of the applicant's inadmissibility; the applicant's significant family ties, particularly to his Alzheimer's Dementia-stricken mother and his sister and her children - all U.S. citizens residing in the United States; the advanced age of both the applicant and his mother; the applicant's lack of criminal history; and attestations by others to his good moral character. The unfavorable factors are the applicant's misrepresentations, unlawful presence, and unauthorized employment.

Although the applicant's violations of immigration law are significant and cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO finds that a favorable exercise of discretion is warranted.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained. The application is approved.