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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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[Redacted]

Date: JUL 06 2011 Office: CALIFORNIA SERVICE CENTER

FILE: [Redacted]

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:

[Redacted]

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) denied a subsequent appeal. The matter is now before the AAO as a motion to reopen. The motion will be granted, but the appeal will be dismissed.

The applicant is a native and citizen of Guyana 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 willfully misrepresenting a material fact to procure admission into the United States. The applicant is applying for a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her lawful permanent resident spouse and U.S. citizen daughter.

The director concluded that the applicant failed to establish that she qualified for a waiver because she did not indicate that she was the spouse or daughter of a U.S. citizen or lawful permanent resident. The director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

The AAO dismissed a subsequent appeal, finding that the record did not contain sufficient evidence to show that the hardships faced by the applicant's lawful permanent resident husband, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

On the present motion, counsel asserts that the applicant has demonstrated extreme hardship to her spouse, and should be granted a waiver. Counsel submits additional evidence of hardship to the applicant's spouse in support of the motion to reopen.

In support of the motion, the record includes, but is not limited to, a brief from counsel, the applicant's child's birth certificate, medical documentation, country condition reports, financial documentation, and a letters from the applicant's spouse. 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, 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 director found the applicant inadmissible under section 212(a)(6)(C) of the Act for having presented the passport and visa of another person to be admitted to the United States on January 7, 2003. The record supports this finding, and the AAO concurs that this misrepresentation was material. The applicant has not disputed his inadmissibility on appeal. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is relevant to section 212(i) waiver proceedings only to the extent it results in hardship to a qualifying relative, in this case the applicant's mother. 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 spouse asserts in an affidavit dated October 24, 2008 that if his spouse returned to Guyana without him, he would experience severe financial problems from raising their child on his own. He states that he and the applicant are first time parents and it would be hard to be separated from each other and raise a child alone. He states that he wants his daughter to have both parents in her life. He contends that he is suffering from emotional stress with the thought of his wife and child being separated from him.

The AAO notes that the assertions of financial hardship are not supported by the record. The record contains an employment verification letter dated October 29, 2008 from [REDACTED] stating that the applicant’s spouse earns a weekly salary of \$900.00 (or \$46,800 annually). The applicant’s spouse submitted an auto loan statement showing that he owes a monthly payment of \$366.32. However, the applicant has not provided any other evidence of her family’s major household expenses, such as her mortgage or rent, as evidence of their financial obligations. The evidence contained in the record does not show that the applicant’s spouse would be unable to meet his expenses with his salary alone if he is separated from the applicant. Accordingly, we cannot give weight to the claims of financial hardship that would arise upon separation.

The AAO acknowledges that the applicant and her spouse will experience emotional hardship if they are separated as a result of her inadmissibility. In *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th

Cir. 1998), the Ninth Circuit Court of Appeals, referring to the separation of an alien from qualifying relatives, held that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and that “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” (Citations omitted). The AAO finds that the applicant’s separation from her spouse constitutes emotional suffering, but the applicant has failed to demonstrate that this hardship alone rises to the level of extreme hardship. While almost every case will present some hardship, the fact pattern here is not beyond the ordinary hardship suffered by individuals who are separated as a result of inadmissibility.

The applicant’s spouse asserts that Guyana is a dangerous place to live because of the high crime rate. He states that he is afraid for his safety and the safety of his wife and daughter if they relocate there. He states that his mother, brothers and sister reside in the United States, and he is very close with them. He states that if he relocates he will suffer financial difficulties, depression and stress. He contends that he suffers from a medical condition, Right Axis Deviation, which causes an abnormal heartbeat and high cholesterol. He notes that he is being treated with medication for these conditions. He states that the health care system in Guyana is very poor.

The AAO notes that the applicant has not submitted evidence to support the claims of medical hardship to her spouse if they relocate to Guyana. The record contains the results of her spouse’s medical examination, including a lab reports. However, there is nothing in plain language from a medical professional providing the diagnosis, prognosis and treatment plans for the applicant’s spouse’s condition. Nor is there any indication from a medical professional that her spouse has a significant or serious medical condition that could not be treated in Guyana. The AAO observes that counsel’s brief states that a medical letter has been submitted, but this document is not part of the record before us. Because of these deficiencies, the AAO cannot find that the applicant’s spouse would suffer medical hardships upon relocation to Guyana. Further, the applicant’s spouse has not explained the financial difficulties he claims he will suffer if he relocates to his native country.

The AAO acknowledges that the U.S. Department of State’s current travel advisory on Guyana states that “Serious crime, including murder and armed robbery, continues to be a major problem.” However, the applicant has not discussed her experiences in Guyana, and whether she was a victim of crime when she resided in the country. Nor has the applicant discussed where she and her spouse would be residing in Guyana, and the safety and conditions of their residential location. The AAO notes that the applicant’s spouse is a native and citizen of Guyana. Therefore, he should have less difficulty adjusting to the culture and customs of the country.

The AAO observes that the record does not contain statements from the applicant’s spouse’s siblings, or evidence of their identity and residence in the United States. However, the record does contain a statement from the applicant’s spouse’s U.S. citizen mother. The AAO acknowledges that the applicant’s spouse would suffer from the emotional loss of being separated from his U.S. citizen mother, and we will give weight to this emotional hardship. The separation of family members often results in significant psychological hardship. 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*, 12 I&N Dec. 810, 813 (BIA 1968), the Board 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. While we will give some weight to the emotional impact of separation in this case, we cannot find that the applicant's spouse is suffering extreme hardship based on this factor alone. The applicant has not submitted evidence to show that the emotional hardship of separation is atypical and beyond what would normally be expected. Based on the foregoing, the applicant has not demonstrated that her spouse would suffer extreme hardship if he relocated to Guyana.

In this case, the record does not contain sufficient evidence to show that the applicant's spouse would suffer extreme hardship if the applicant is denied admission to the United States. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility 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(i) of the Act, the burden of establishing that the application merits approval 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.