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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
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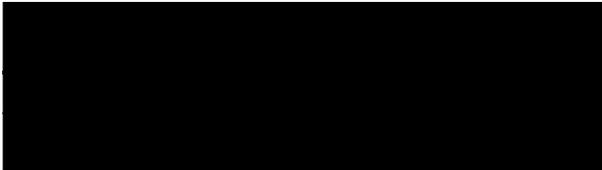
FILE: 

JUL 15 2011

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.

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 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 waiver application was denied by the Officer in Charge (OIC), Albany, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Guyana who used a photo-substituted passport to enter the United States. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). She is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The OIC concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), date of service January 27, 2006.

On appeal, counsel for the applicant asserts that the applicant's spouse will suffer extreme hardship if the applicant is not admitted to the United States. *Form I-290B*, received February 24, 2006.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) In general. 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 chapter is inadmissible.

The record indicates that the applicant presented a photo-substituted passport when entering the United States, and thus entered the United States by materially misrepresenting her identity. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

The record contains, but is not limited to, the following evidence: a brief from counsel; a statement from the applicant; a statement from the applicant's spouse; statements from friends and associates of the applicant and her family; country conditions materials on Guyana, including an amnesty international report and the U.S. Department of State Country Reports on Human Rights, section on Guyana; tax records and employment letters for the applicant and her spouse; a psychological evaluation of the applicant and her spouse by [REDACTED], dated November 30, 2004; a statement from [REDACTED], dated December 3, 2004; a statement from [REDACTED] M.D., dated May 7, 2001; medical records pertaining to the applicant's spouse's parents; and documents filed in relation to the applicant's Form I-130.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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-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.

Counsel asserts that the applicant’s spouse will suffer extreme hardship upon relocation to Guyana. *Brief in Support of Appeal*, dated March 21, 2006. He explains that the applicant’s spouse has lost most of the hearing in his right ear and some in his left ear, and has previously described him as disabled due to sensorineural damage. Counsel further states that Guyana does not have the medical facilities to provide treatment for such a condition. He explains that the applicant’s spouse’s immediate family all reside in the United States, and that his parents have various medical conditions and would suffer hardships if the applicant’s spouse had to relocate. He further asserts that the economic and social conditions in Guyana would result in hardship to the applicant’s spouse and refers to news periodicals discussing crimes in Guyana and reports on human rights violations.

The record contains a letter from [REDACTED], an ear, nose and throat specialist, dated May 7, 2001. [REDACTED] states that the patient has had some conductive hearing loss. [REDACTED] further states that he would be “interested to find out if he has a sensorineural hearing deficit.” The record also contains an Audiological Evaluation, on [REDACTED] letterhead, dated May 31, 2001. The Audiological Evaluation contains medical data and test results. The AAO would note that it is not qualified to interpret raw medical data and therefore cannot draw conclusions from such documentation with regard to its accuracy or weight in support of an assertion. The record also includes a hand written statement from [REDACTED] dated December 3, 2004, asserting that the applicant’s spouse suffers from “sensorineural hearing loss” and back pain.

The evidence in the record, while sufficient to show that the applicant's spouse has some hearing loss, fails to describe to what degree he has suffered a loss of hearing, what degree of impact it has on his ability to function on a daily basis and whether or not the condition is treatable. Thus, the record does not support counsel's characterization of the applicant's spouse as "disabled" due to hearing loss. Without further evidence of the severity of hearing loss, its impact on his ability to function on a daily basis and to what degree the condition is treatable, the record fails to support that the applicant's spouse suffers a significant medical condition related to hearing loss. The AAO also notes that the record does not contain any evidence that the applicant's spouse would not be able to obtain treatment for his condition in Guyana.

With regard to the economic and social conditions in Guyana, the record contains two reports on human rights in the country and several newspaper periodicals from one source discussing incidents of crime in the country. General reports on national statistics or economic conditions in an alien's native country will not establish extreme hardship in the absence of evidence that the conditions would specifically impact the qualifying relative. *Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996), citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir. 1985). In this case, the State Department's report states that the Guyanese government generally respects human rights. Nonetheless, the AAO will consider that the applicant's spouse has resided in the United States for over twenty years and would be returning to economic conditions that are less than ideal.

The record does contain evidence that the applicant's spouse's parents reside with him, that they depend on him for support and that they have several age-related medical conditions. However, the record reveals that the applicant's spouse has a brother who lives in the same geographic area. It has not been explained why this brother or other family members would be unable to care for the applicant's spouse's parents to mitigate any impact of the applicant's spouse's departure in the event the applicant's spouse relocated to Guyana. Nonetheless, the AAO will also consider the fact that the applicant's spouse's immediate family resides in the United States, and that the applicant's spouse would suffer a degree of emotional hardship due to the separation from his parents, who have medical conditions and who currently reside with him in the United States.

When these hardship factors, separation from his parents, his long-time residence in the United States, are considered in aggregate with the common impacts of relocation, they establish that the applicant's spouse would experience uncommon hardships rising to the level of extreme upon relocation. As such, the record supports that the applicant's spouse would experience extreme hardship upon relocation.

Counsel asserts the applicant's spouse would experience emotional, physical and financial hardship upon separation. *Brief in Support of Appeal*, dated March 21, 2006. He asserts that the applicant's spouse has lost most of his hearing in his right ear and some in his left, and that because of this he needs the applicant to help care for his parents – both of whom have medical conditions and who reside with him. He further states that the applicant's spouse would experience emotional hardship and refers to a psychological profile in the record, and that without the applicant's income he will be unable to support himself or two households once the applicant relocated.

The applicant's spouse has submitted a letter which discusses the assertions made by counsel, and details the emotional impact he would experience if the applicant were not admitted. *Statement of the Applicant's Spouse*, dated December 2, 2004.

As noted above, the record does not contain sufficiently probative documentation to support counsel's characterization of the applicant's spouse's medical issue. There is no documentation which objectively establishes he would be physically incapable of caring for his parents. In addition, although the record contains medical records corroborating the medical conditions of the applicant's spouse's parents, they do not indicate that they are in need of a physical caretaker, or that they are incapable of caring for themselves. As such, the record fails to support the assertion that the applicant's spouse would experience any uncommon physical hardship because his spouse is not there to assist him with caring for his parents.

The financial documentation in the record includes tax records and a list of monthly financial obligations. However, as noted above, the applicant's spouse and his parents reside at the same address. There is nothing which indicates what income the parents earn. Thus, it is unclear what financial impact the applicant's departure would have on her spouse. The record does not support that the financial impact on the applicant's spouse is any greater than what is commonly experienced by the relatives of inadmissible aliens who remain in the United States.

With regard to the emotional hardship, the record includes a statement from an expert witness in the form of a family psychological evaluation by [REDACTED]. In her evaluation [REDACTED] recounts the background of the applicant and her spouse as relayed to her by the applicant, and concludes that her spouse will experience a major emotional impact if she were not admitted.

The evidence does not indicate that the applicant's spouse suffers from clinical depression as established by the Diagnostic and Statistical Manual of Mental Disorders, 4th edition, published by the American Psychiatric Association (DSM IV). There is no other evidence in the record indicating the applicant's spouse is receiving any routine professional treatment or specialized care, or that he is experiencing any emotional hardship which rises above that commonly experienced by the relatives of inadmissible aliens. The conclusions reached in the submitted evaluation do not provide a basis upon which the AAO can distinguish the emotional impact on the applicant's spouse from that which normally impacts the relatives of inadmissible aliens.

The AAO acknowledges that the applicant's spouse may experience emotional hardship if he remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, even when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship articulated in this case, based on the evidence in this record, does not rise above the common result of removal or inadmissibility and thus does not constitute extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*,

96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. As the applicant has failed to establish that a qualifying relative would experience extreme hardship based on separation, no purpose would be served in determining whether she warranted a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. *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.