

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



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



HS

Date: JUL 26 2011 Office: NEWARK

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:

UNREPRESENTED

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,

Michael Shumway
for Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native of and citizen of Guyana who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a benefit under the Act by willful misrepresentation. He seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and children.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the Field Office Director*, dated March 31, 2009.

On appeal, the applicant asserts that his wife will suffer extreme hardship if the present waiver application is denied, whether she remains in the United States or relocates to Guyana. *Statement from the Applicant on Form I-290B*, dated April 27, 2009.

The record contains, but is not limited to: statements from the applicant, the applicant's wife, and the applicant's brother; a brief from the applicant's former counsel¹; reports on conditions in China and Guyana; documentation in connection with the applicant's and his wife's employment, taxes, and expenses; letters from physicians for the applicant's parents; documentation in connection with the applicant's children's academic activities and dental care; and a psychological evaluation for the applicant's wife. The entire record was reviewed and considered in rendering this decision.

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

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 shows that on November 2, 1995, the applicant applied for Transit Without Visa (TWOV) status in the United States using a fraudulent Canadian Record of Landing document that was presented in his passport. Accordingly, the applicant attempted to procure a benefit under the Act by willful misrepresentation, he is inadmissible under section 212(a)(6)(C)(i) of the Act, and he requires a waiver under section 212(i) of the Act.

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

¹ The applicant submits a brief from [REDACTED] who has represented the applicant in prior proceedings before U.S. Citizenship and Immigration Services. However, Mr. [REDACTED] is not named on Form I-290B as the filer, and he has not provided a Form G-28, Notice of Entry of Appearance as Attorney or Representative, to indicate that he represents the applicant in the present appeal. Thus, the applicant is deemed self-represented.

- (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 wife 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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

In a statement on Form I-290B, the applicant states that his wife will suffer extreme hardship if he is not permitted to become a lawful permanent resident. He adds that his children will be unable to receive the education or healthcare to which they are entitled should they reside in Guyana. He provides that his wife will be unable to support herself financially or emotionally in his absence. He asserts that Guyana is an insecure place to live, and that his family cannot be separated.

In a statement dated April 23, 2009, the applicant indicated that people in Guyana live in poverty and fear of crime. He stated that you cannot obtain employment without connections, and that he has no friends or family who could assist him. He indicated that public schools do not give proper attention to students, and private schools are expensive. He explained that his children are doing well in school in the United States, and that they will lack opportunities in Guyana. He stated that he works at night and cares for his children from the time they are finished with school, and that they would face difficulty without him. The applicant provided that his mother receives unemployment benefits and his father’s job is unstable. He added that his parents have health problems and cannot be relied upon. He asserted that his wife is depressed and emotionally unstable due to his possible departure.

In a statement dated April 23, 2009, the applicant’s wife provided that she was born in Guyana and is a citizen of the United States. She described the applicant’s level of engagement with their three children, including that he picks them up from school, helps with their homework, takes them to medical appointments, and attends parent-teacher conferences. She explained that her children are doing well in school, but that the school system in Guyana is poor and her children would have no future there. She added that she would be unable to work full-time without the applicant’s assistance. She asserted that she would face significant economic difficulty in the applicant’s absence. She noted that she and the applicant do not have relatives or friends in Guyana, and that it is difficult to live without a support system there. She stated that her father is in Florida and her mother is in Canada, so they are unavailable to help her. She expressed concern for her children’s safety in Guyana due to incidents of human trafficking there. She asserted that her children’s lives will be ruined if their family is separated.

In a statement dated June 17, 2008, the applicant's wife expressed that she is suffering from depression. She discussed her concern for her family's health due to the possible loss of their health insurance that they receive through the applicant's employment. She stated that foreigners are targets for crime in Guyana, and that her family members would be at risk there. She noted that they may lose their home should the applicant depart the United States.

The applicant provided a psychological evaluation of his wife, conducted on June 2, 2008 by Dr. [REDACTED]. Dr. [REDACTED] observed that the applicant's wife was experiencing many emotional difficulties due to the stress of the applicant's possible removal. Dr. [REDACTED] stated that the applicant's wife has a very limited social network which makes her more reliant on the applicant, and that she reported experiencing a depressed mood, diminished interest and pleasure in most activities, poor sleep, a fluctuating appetite, a diminished ability to concentrate, and a lack of motivation. Dr. [REDACTED] stated that the applicant's wife meets the diagnostic criteria for Major Depressive Disorder.

In a brief dated April 29, 2009, the applicant's former counsel states that the field office director applied an erroneous evidentiary standard in the present matter, as she applied a "clear and convincing" standard instead of the appropriate "preponderance of the evidence" standard. Counsel discusses an unpublished decision from the AAO, and asserts that the present matter presents more compelling hardship factors than those under consideration in the referenced matter. Counsel states that the applicant's wife would endure economic detriment if the applicant departs, as she would not be self-sufficient due to her mortgage and other bills. Counsel asserts that the applicant's wife would lack adequate resources to visit the applicant abroad. Counsel states that the report from Dr. [REDACTED] supports that the applicant's wife is facing significant emotional hardship due to the applicant's possible departure. Counsel notes that the applicant's wife's depression would be exacerbated should she leave the United States where she has resided since 1995.

Upon review, the applicant has shown that his wife will endure extreme hardship should the present waiver application be denied. The record establishes that the applicant's wife would face significant hardship should she relocate to Guyana. The applicant has presented evidence to show that he and his wife both have consistent employment in the United States, and that they own a home. While not an uncommon consequence, it is evident that they would be unable to reside in their home and they would lose their current positions should they relocate abroad.

The applicant has provided reports on conditions in Guyana, including information on human rights violations, prevalent crime, and the poor economy. While the applicant has not shown that his family would be specifically targeted for harm, the AAO acknowledges that the applicant's wife would have a reasonable concern for her, her children's, and the applicant's safety there. The record further shows that the applicant's wife would face economic conditions that are significantly less favorable than those in the United States. It is evident that relocating to Guyana after a 16-year residence in the United States would have an emotional impact on the applicant's wife.

The applicant and his wife have three U.S. citizen children, ages nine, eight, and four. While the applicant has not shown that his children would face unusual challenges in adapting to life in a

foreign country, the AAO acknowledges that relocating with three young children exacerbates the economic and emotional challenges the applicant's wife would face.

The AAO has carefully examined the report from Dr. [REDACTED] which reflects that the applicant's wife is experiencing emotional difficulty due to the applicant's immigration difficulties and the potential impact on their family. The report does not identify emotional consequences that, by themselves, rise to an extreme level. However, the AAO gives due consideration to the challenges identified by Dr. [REDACTED]

All stated elements of hardship must be considered in aggregate to determine if the applicant's wife will endure extreme hardship. While no single factor reaches an extreme level, the applicant has shown that the totality of his wife's experience in Guyana would constitute extreme hardship.

The applicant has also shown that his wife will suffer extreme hardship should she remain in the United States without him. The applicant has presented clear and detailed explanation of the role he serves in his family, including caring for his children during the day while his wife works, and then working himself afterwards. The records supports that the applicant's children rely on him for substantial parental support including care and supervision, as well as assistance with their academic activities. The applicant's wife earns \$9.65 per hour as an aide to the elderly and disabled children, and she earned a gross income of \$12,678.98 in 2007. The applicant's family's mortgage alone is \$1,778.73 per month, or \$21,344.76 annually. While the AAO does not have complete financial information for the applicant's family, the included documentation is sufficient to show that the applicant's wife would face significant economic and emotional difficulty should she attempt to support and care for her three young children while working full-time. The economic conditions in Guyana support that the applicant would face challenges assisting his wife and children from abroad.

As discussed above, Dr. [REDACTED] report shows that the applicant's wife has suffered emotional difficulty due to the applicant's possible departure, and it is evident that possible permanent family separation resulting from inadmissibility under Section 212(a)(6)(C)(i) of the Act would exacerbate her psychological hardship.

Based on the foregoing, considering all elements of hardship in aggregate, the applicant has shown that his wife will suffer extreme hardship should the present waiver application be denied.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship does not create an entitlement to a waiver of inadmissibility, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12.

The negative factors in this case consist of the following:

The applicant attempted to obtain a benefit under the Act, Transit Without Visa status, by presenting a fraudulent Canadian immigration document. The record shows that the applicant has resided in the United States for a lengthy duration without a legal immigration status.

The positive factors in this case include:

The applicant has significant family ties to the United States, including his wife, parents, and three U.S. citizen children; the applicant's wife will suffer extreme hardship should the present waiver application be denied; the applicant's children will face significant hardship should the applicant depart the United States; the record shows that the applicant has supported his family and provided substantial care for his three children; the applicant has not been convicted of crime; the applicant has worked and paid taxes in the United States; and the record supports that the applicant is of good moral character.

Although the applicant's immigration violation cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for an 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. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden that he merits approval of his application.

ORDER: The appeal is sustained.