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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  
and Immigration  
Services

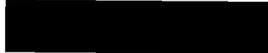
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Date: JUL 29 2011

Office: LOS ANGELES

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,

  
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Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Armenia, 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 entering the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Immigrant Petition for Alien Relative (Form I-130). 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.

In a decision dated December 10, 2007, the Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated December 10, 2007.

On appeal, the applicant's attorney submitted a brief in support of the applicant's waiver application. The applicant's attorney asserts that the qualifying spouse has been in the United States for over thirty years and came to the United States as a child. The applicant's attorney further states that the qualifying spouse has close family ties to the United States and he provides support for his parents in the United States. Moreover, the applicant's attorney contends that the qualifying spouse would suffer financial and medical hardships if he were to live in the United States without the applicant or if he were to relocate to Armenia with the applicant. The applicant's attorney also asserts that the qualifying spouse would encounter psychological and emotional hardships if he were to reside in the United States without the applicant.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), a copy of the qualifying spouse's United States passport, a copy of the birth certificate of the applicant and qualifying spouse's child, a marriage certificate, a letter indicating that the applicant was pregnant in 2007, a letter from the qualifying spouse's doctor, a death certificate for the applicant's father, a copy of a disabled placard from the Department of Motor Vehicle for the qualifying spouse's father, an evaluation by a psychologist regarding the qualifying spouse, briefs written on behalf of the applicant, photographs, an affidavit from the applicant, financial documentation, an approved Form I-130 and other documentation submitted in conjunction with the Application to Adjust Status (Form I-485).

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:

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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. The applicant's husband 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.

In the present case, the record reflects that the applicant entered the United States on October 27, 2001 using a fraudulent passport with another person’s name. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States through fraud or misrepresentation.

The applicant’s qualifying relative is her husband, who is a United States citizen. The documentation provided that specifically relates to the qualifying spouse’s hardship includes Form I-601; Form I-290B, a copy of the birth certificate of the applicant and qualifying spouse’s child, a letter from the qualifying spouse’s doctor, a copy of a disabled placard from the Department of Motor Vehicle for qualifying spouse’s father, an evaluation by a psychologist regarding the qualifying spouse, briefs written on behalf of the applicant, financial documentation and other documentation submitted with Form I-485. The entire record was reviewed and considered in rendering a decision on the appeal.

As previously stated, the applicant’s attorney asserts that the qualifying spouse has been in the United States for over thirty years and came to the United States as a child. The applicant’s attorney further indicates that the qualifying spouse has close family ties to the United States, and that he provides support for his parents in the United States. Moreover, the applicant’s attorney contends that the qualifying spouse would suffer financial and medical hardships if he were to live in the

United States without the applicant or if he were to relocate to Armenia with the applicant. The applicant's attorney also asserts that the qualifying spouse would encounter psychological and emotional hardships if he were to reside in the United States without the applicant.

The AAO finds that the applicant has established that her qualifying spouse will suffer extreme hardship as a consequence of being separated from her. With regard to the emotional and psychological hardships, the record contains an evaluation from a psychologist. The psychological evaluation explains that the qualifying spouse is experiencing significant emotional distress, depression, anxiety, withdrawn behavior, attention problems, thought problems, aggressiveness, anti-social personality issues and excessive and unmanageable worrying, as well as other issues. The psychologist also states that the qualifying spouse is experiencing suicidal thoughts, for which he was prescribed medication. The psychologist indicates that the qualifying spouse has been prescribed two separate medications for his condition. With regard to the qualifying spouse's medical issues, the record contains a letter from his doctor indicating that he underwent a kidney transplant and requires constant support with frequent office visits, laboratory tests and several medications including immunosuppressive drugs. The qualifying spouse's doctor also notes that the qualifying spouse suffers from diabetes mellitus, which has been difficult to control due to the medications that he needs to take for his kidneys. The record also contains documentation regarding the qualifying spouse's income and expenses, including tax returns and other materials. These submitted documents demonstrate that the qualifying spouse may have a difficult time running his business and caring for his child, especially in light of his medical issues. As such, the record reflects that the emotional, psychological, medical and financial hardships facing the qualifying spouse in the United States without the presence of the applicant, when considered in the aggregate, rise to the level of extreme.

The applicant has also demonstrated that her qualifying spouse would suffer extreme hardship in the event that he relocated to Armenia. The qualifying spouse has lived in the United States for over thirty years and his child, sibling and parents live in the United States. The qualifying spouse's father is also disabled and the applicant provided a copy of a Department of Motor Vehicle placard to support these assertions. Further, the applicant's attorney asserts that the qualifying spouse would face medical and financial hardships if he relocated to Armenia. With regard to the medical hardships, the record contains a letter from the qualifying spouse's doctor indicating that the qualifying spouse underwent a kidney transplant, and that he requires constant support including frequent office visits, laboratory tests and several medications. The psychologist's evaluation also indicates that the qualifying spouse also suffers from various medical issues for which he requires health insurance. The applicant's attorney contends that, if the qualifying spouse were unable to find suitable employment with health insurance, he would be unable to afford all his medical care. Further, the applicant's attorney indicates that the qualifying spouse is self-employed and would lose his business if he relocated to Armenia. The record contains various financial documents including tax returns that confirm the qualifying spouse owns his own trucking company. The AAO concludes the qualifying spouse would experience extreme hardship if he relocated to Armenia to accompany the applicant, due to his medical hardships, the loss of his company, the potential loss of his health coverage, and his length of residence in and his family ties to the United States.

Considered in the aggregate, the applicant has established that her qualifying spouse would face extreme hardship if the applicant's waiver request is denied.

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.

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 stated 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(i) relief must bring forward to establish that she 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 this matter are the extreme hardship the qualifying spouse would face if the applicant is not granted this waiver, the qualifying spouse's support for the applicant's petition and her apparent lack of a criminal record. The unfavorable factors in this matter are the misrepresentations made by the applicant in order to enter the United States.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. 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 her burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.