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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



tlj

DATE: Office: NEW YORK CITY, NEW YORK Date: 

**JUN 28 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: SELF-REPRESENTED

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 waiver application was denied by the District Director, New York City, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 50-year-old native and citizen of Portugal who 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), for attempting to procure entry into the United States by fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a Lawful Permanent Resident (LPR) of the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States with her spouse and children.

The district director found that the applicant attempted to enter the United States in 1991 by fraud or the willful misrepresentation of a material fact, that she was detained and subsequently deported from the United States, and that the applicant failed to disclose the detention and deportation on her application to adjust status and at the adjustment of status interview. The director also found that the applicant had not established extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated July 7, 2008.

On appeal, the applicant states that she did not willfully misrepresent any material fact, that she attempted to enter the United States in 1991, that she was detained and after three days of detention, she withdrew her application for admission into the United States and departed the country. The applicant also states that her spouse and children will suffer extreme hardship if she is not permitted to remain in the United States. *See Form I-290B*, dated August 1, 2008, and a letter brief submitted in support of the appeal.

The record includes, but is not limited to, an affidavit and a statement from the applicant, a statement from the applicant's spouse, and supportive statements from the applicant's children, [REDACTED] and [REDACTED]. 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.

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 [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [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....

Section 212(a)(9) of the Act provides in pertinent part:

(B) Aliens Unlawfully Present -

(i) In general

Any alien (other than an alien lawfully admitted for permanent residence) who-

was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver

The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present case, the record reflects that on February 23, 1991, the applicant attempted to procure entry into the United States as the wife of [REDACTED] by presenting a Portuguese passport and a counterfeit B-1/B-2 non-immigrant visa. The applicant was detained and a sworn statement taken under oath. The applicant stated that she purchased a passport from a man in Portugal for \$2,000, which she used to travel to the United States. On February 25, 1991, the applicant signed a Notice of Visa Cancellation/Border Crossing Card Voidance (Form I-275) withdrawing her application for admission into the United States. On February 26, 1991, the applicant left the United States. The record reflects that the applicant subsequently entered the United States without being inspected and admitted or paroled. The record does not reflect when the applicant actually reentered the United States, however, the applicant was issued a passport at the Portuguese Consulate in New York City on August 30, 1995, and she indicated her residence at that time as Jamaica, New York. On October 30, 1997, the applicant filed a derivative Application to Register Permanent Residence or Adjust

Status (Form I-485) as a dependent of her husband, who was granted legal permanent resident status as the beneficiary of an approved Immigrant Petition for Alien Worker. On March 25, 2005, the director denied the Form I-485 finding that the applicant misrepresented a material fact in order to gain an immigration benefit, in that the applicant had claimed another person as her husband on February 23, 1991, when she attempted to enter the United States. The director found her inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant timely filed a Motion to Reconsider (MTR) and a Form I-601 waiver application. On July 8, 2008, the director denied the MTR finding that the applicant failed to disclose material facts on her Form I-485 and at the interview. Specifically, the director found that on February 23, 1991, the applicant attempted to gain admission into the United States by presenting a Portuguese passport with a B-2 visa and claiming one [REDACTED] as her husband and [REDACTED] as her child, and that the applicant was detained and excluded from the United States. The director also denied the Form I-601 finding that the applicant failed to demonstrate extreme hardship to a qualifying relative.

On appeal, the applicant states that she did not willfully misrepresent any material fact, that she attempted to enter the United States in 1991, that she was detained and after three days of detention, she withdrew her application for admission into the United States and departed the country.

The AAO agrees with the applicant that she was not deported or excluded from the United States in 1991 because she withdrew her application for admission into the United States and was allowed to voluntarily depart the country on February 26, 1991. The AAO however, finds that the applicant is inadmissible into the United States under section 212(a)(6)(C)(i) of the Act because on February 21, 1991, the applicant attempted to procure entry into the United States by presenting a passport and a fraudulent non-immigrant visa in order to obtain an immigration benefit. The fact that the applicant subsequently withdrew her application for admission and left the United States after she was refused entry, does not cure her initial attempt to procure entry by fraud or willful misrepresentation.

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 her child can be considered only insofar as it results in hardship to a qualifying relative. 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-Moralez*, 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 spouse [REDACTED], is a 50-year-old native of Portugal and a Lawful Permanent Resident of the United States. The applicant indicated that she

and her spouse were married in Portugal on May 30, 1981, and they have three grown children, who are all residing in the United States.

The applicant's spouse states that he has been residing in the United States for more than 18 years, that he owns a house and that he has never lived separate from the applicant. The applicant's spouse states that he has several medical problems, such as diabetes, cholesterol and high blood pressure that require a certain dietary plan and that the applicant is the one to take care of him. *Statement from [REDACTED]* dated August 1, 2008. The statements from the applicant's children, [REDACTED] and [REDACTED] provide information on the applicant's good moral character and state that they and their father will have difficulties coping without the applicant. For example, [REDACTED] states that the applicant is an integral part of the family, that they cannot imagine life without her, that the applicant is their father's "support system," and that the applicant and their father truly and genuinely love each other. [REDACTED] states that she loves the applicant and that the applicant is her "rock" who has supported her emotionally, that the applicant is "the backbone of the family and the glue that keeps us together without falling apart emotionally and financially," that the applicant keeps their father's health in check, providing him with the daily intake of medications and dietary plans due to his medical condition and that "the family cannot function or much less live without [the applicant]." *See Statements from [REDACTED]*, dated August 1, 2008.

The AAO acknowledges that separation from the applicant may cause some challenges for her spouse, however, it finds the evidence in the record insufficient to demonstrate that the challenges her spouse faces, meet the extreme hardship standard. While the emotional hardship of separation is apparent from the applicant's spouse's statements and the statements from her children, the applicant did not provide medical records, detailed testimony, or other evidence to show that the emotional and the physical hardships her spouse faces are unusual or beyond what would be expected upon family separation due to one member's inadmissibility. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO notes that hardships to the applicant's children are not considered in the extreme hardship analysis, except to the extent that they negatively impact the applicant's spouse, the qualifying relative. In this case, the applicant's two grown children state that they will miss their mother's support if she is removed from the United States. Based on the statements alone, and no other supportive evidence, the applicant has failed to establish that her children would suffer extreme hardship as a result of family separation, which in turn would result in extreme hardship to her spouse, the qualifying relative in this case. Accordingly, the applicant has failed to establish that her spouse would suffer extreme hardship if her waiver application is denied and she is removed from the United States.

With regards to relocation to Portugal, no claim was made that the applicant's spouse would suffer extreme hardship if he relocated to Portugal to live with the applicant. Therefore, the AAO cannot make a determination of whether the applicant's spouse would suffer extreme hardship if he were to relocate to Portugal to live with the applicant.

In sum, although the applicant's spouse claims hardships based on family separation, the record does not support a finding that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required for a waiver of inadmissibility under section 212(i) and section 212(a)(9)(B)(v) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.