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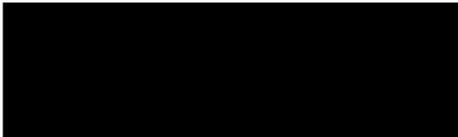
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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DATE: NOV 14 2011

Office: ST. PAUL, MN

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:

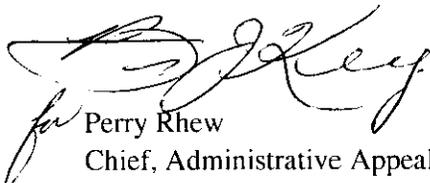


INSTRUCTIONS:

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.

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, St. Paul, Minnesota, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen. The motion will be granted, but the previous decision of the AAO will be affirmed.

The record reflects that the applicant is a native and citizen of Guyana 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 procuring entry into the United States by fraud or the willful misrepresentation of a material fact. The record reflects that the applicant is the spouse of a United States citizen. 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.

The district director concluded that the applicant had failed to establish that the bar to her admission would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the District Director*, dated August 21, 2006. The AAO reached this same conclusion and dismissed the applicant's appeal. *Decision of the Acting Chief, Administrative Appeals Office*, dated April 6, 2009.

On motion, counsel submits new evidence to demonstrate that the applicant's spouse and child would suffer extreme hardship if the applicant is removed from the United States. *See Form I-290B, Notice of Appeal or Motion*, dated May 3, 2009.

In support of the motion, the record includes, but is not limited to, counsel's brief; a May 1, 2009 letter from [REDACTED] regarding the applicant's spouse; copies of school records relating to the applicant's child; hospital Discharge Instructions for the applicant's spouse; pharmacy receipts from Fairview Pharmacy relating to the applicant's spouse; and printouts of information on medications from [REDACTED]. The entire record was reviewed and all relevant information considered in reaching 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.

On motion, counsel claims that the applicant never admitted to purchasing a visa for \$8,000. Counsel asserts that the applicant stated that she paid \$8,000 to an individual who promised to obtain a visa for the applicant to travel to the United States legally, and that the applicant only discovered the visa was fraudulent at the port of entry in New York. Counsel contends that the director's finding that the applicant procured the visa by fraud or willful misrepresentation of a material fact is in error.

Contrary to counsel's assertions, the record reflects that during an adjustment of status interview on August 2, 2006, the applicant testified under oath that she paid an agent \$8,000 for a U.S. visa. The

applicant further testified that she traveled to the United States with the agent and that they both went through the inspections process. The AAO notes that the record contains no evidence that would establish that the applicant's testimony regarding her purchase and use of a fraudulent visa to enter the United States on August 24, 1999 was inaccurate or untruthful. Accordingly, we find that the applicant procured entry into the United States using a fraudulent document and is, therefore, inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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.

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 an applicant or other family members 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.

In our April 6, 2009 decision, the AAO considered whether the record established that the applicant’s spouse would experience extreme hardship as a result of her inadmissibility, but concluded that the evidence of record did not support this conclusion, whether the applicant relocated with her to Guyana or remained in the United States. We now turn to a consideration of the additional evidence submitted by the applicant on motion and whether the record now establishes that a qualifying relative would suffer hardship as a result of the applicant’s inadmissibility.

On motion, counsel submits evidence to establish that the applicant’s spouse is depressed that he has been receiving treatment from a psychologist and that he has also been seen at a hospital where further treatment of his mental condition is ongoing. This newly submitted evidence includes hospital Discharge Instructions that indicate that, on April 29, 2009, the applicant’s spouse was seen by a Clinical Nurse Specialist in its Acute Psychiatric Service. The Discharge Instructions reflect that the applicant’s spouse is taking two antidepressant medications (Citalopram and Trazodone) and that he was instructed to follow up with a [REDACTED] in two weeks. The record also contains online printouts from [REDACTED] on the two medications being taken by the applicant’s spouse, which establish that the medications are

used to treat depression. The record on motion also contains a May 1, 2009 psychological evaluation of the applicant's spouse prepared by [REDACTED]

The AAO will consider this evaluation in light of the two psychological evaluations already submitted for the record, the August 1, 2006 evaluation from [REDACTED] and the September 7, 2006 evaluation previously prepared by [REDACTED]

In her evaluation dated August 1, 2006, [REDACTED] states that the applicant's spouse reported to her that he has been feeling "stressed out" because of the upcoming immigration appointment of the applicant; that he was unable to think sometimes; that he had difficulty sleeping; that he was anxious about what will happen to his family; and that he was concerned about his ability to take care of his family financially, to provide guidance and support for his son, and to manage his household without the applicant. [REDACTED] does not provide a mental health diagnosis for the applicant's spouse but does indicate that separation would result in significant grief and anxiety for the applicant's spouse.

In his first examination of the applicant's spouse, [REDACTED] states that he found both the applicant's spouse and son to be in a state of agitation because of their fear that the applicant will be removed from the United States. [REDACTED] reports that the threat of the applicant's removal is causing severe consternation in the family, because the disruption to the family will be severe. [REDACTED] notes that the applicant's spouse's psychological state could deteriorate, and he could develop a severe anxiety disorder or clinical depression or both. [REDACTED] also notes that the applicant's son will be extremely lost and devastated without the applicant because she is involved in every aspect of his life, that his emotional state is very poor and he could easily develop major depression.

In the evaluation submitted on motion, [REDACTED] states that the applicant's spouse contacted him on April 11, 2009, "in a state of extreme emotional frenzy," after he received notice of the AAO's dismissal of the applicant's appeal. [REDACTED] reports that when he met with the applicant's spouse, he observed that the applicant's spouse was in a state of extreme distress, weeping at times, and was alarmed at the prospect that his spouse might soon be deported and that his nuclear family would become fractured. [REDACTED] observes that the applicant's spouse appeared dazed, uncommunicative and flat, and that his speech appeared halting and slurred. [REDACTED] states that the applicant's spouse's fear for the future is accompanied by acute anxiety, characterized by catastrophic thinking; that he sees nothing but total emotional breakdown for himself and his spouse; and that he does not see how his son will function without the applicant. [REDACTED] also states that the applicant's spouse reported to him that he has been experiencing persistent loss of energy, that his ability to concentrate is greatly diminished, that he has lost weight, and that he fears that he will soon be unable to work and support his family.

[REDACTED] reports that he has met with the applicant's spouse six times since their April 11, 2009 meeting and that the applicant's spouse is suffering from major depression and acute anxiety. [REDACTED] notes that the applicant's family is in the process of a severe emotional and mental breakdown. The AAO notes that the hospital Discharge Instructions and information from [REDACTED], the other evidence submitted on motion, support [REDACTED] evaluation that the applicant's spouse is experiencing significant mental health problems.

On motion, counsel also states that the applicant is now working because her son is getting ready to attend college. However, counsel does not assert that the applicant's spouse is dependent on her income or that her removal would preclude her son from obtaining a college education. The AAO also notes that the record contains no documentation to establish the applicant's current employment.

Having reviewed the record, the AAO finds it to contain sufficient evidence to establish that the applicant's spouse is experiencing significant emotional hardship as a result of his fear of separation from the applicant and that his current mental status will further deteriorate upon separation. Consequently, when the applicant's spouse's exacerbated mental and emotional problems are added to the difficulties and disruptions normally created by the removal or exclusion of a family member, the AAO concludes that the applicant's spouse would experience extreme hardship if he continues to reside in the United States without the applicant.

The AAO notes that on motion, counsel does not address or provide evidence of hardship to the applicant's spouse upon relocation. Thus, the AAO reaffirms our prior findings regarding the evidence of record as it relates to relocation, incorporating by reference the discussion in our April 6, 2009 decision.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if separated from the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case.

Accordingly, the AAO 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.

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 AAO will affirm our prior decision.

**ORDER:** The motion is granted. The prior decision of the AAO is affirmed.