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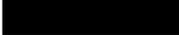
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**

765



Date: **OCT 21 2011**

Office: NEW YORK, NEW YORK

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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Ecuador 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 admission to the United States through fraud or the willful misrepresentation of a material fact. The applicant is married to a United States citizen and the beneficiary of an approved 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 reside in the United States with her spouse.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated April 28, 2009.

On appeal, the applicant, through counsel, claims that the applicant "was not aware of any misrepresentations made to the consular officer, and believed that everything presented [on] her behalf was indeed, correct and factual." *Counsel's appeal brief*, filed May 8, 2009. However, if fraud is found, counsel states that extreme hardship to the applicant's husband has been established. *See id.*

The record includes, but is not limited to, counsel's appeal brief; statements from the applicant, her husband, and brother-in-law; medical documents for the applicant's husband; tax documents, household bills, bank statements, and a lease agreement; and an employment verification for the applicant's husband. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (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 Act is inadmissible.
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (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...

In the present case, the record indicates that in 2001, the applicant applied for a nonimmigrant visa in Ecuador by presenting a fraudulent birth certificate. Partially based on this fraudulent birth certificate, the applicant was issued a nonimmigrant visa. On October 26, 2001, the applicant entered the United States on a B-2 nonimmigrant visa with authorization to remain in the United States until April 26, 2002.

In counsel's appeal brief, counsel contends that the documents presented to the consular officer in Ecuador were presented by the applicant's mother, and the applicant never spoke to or presented any documents to the consular officer. Counsel states that the applicant was only eighteen (18) years old at the time. Counsel also states that the documents presented on the applicant's behalf listed her father as [REDACTED] who she had believed was her uncle, but was later told by her mother that he was her biological father. In a statement dated March 24, 2009, the applicant states she "did not know the documents that were submitted to the embassy were fraudulent." Counsel claims that the applicant did not commit fraud, and since she believed [REDACTED] was her father, she did not knowingly or willfully misrepresent a material fact. However, the applicant states that she "understand[s] that [she] was the beneficiary of fraud." Counsel also claims that the misrepresentation was not material. Counsel states that "[t]here is no reason to believe that [the applicant] would have been denied a visa if the consular officer thought her father was dead, or someone other than [REDACTED]. There is no indication that a line of inquiry was cut off by the alleged misrepresentation."

The AAO finds counsel's contention that the applicant is not inadmissible to the United States through the misrepresentation of a material fact to be unpersuasive. The AAO observes that in waiver proceedings the burden of proof is on the applicant to establish admissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. As discussed above, the record reflects that the applicant presented a fraudulent birth certificate in support of her nonimmigrant visa application. The applicant also submitted the false birth certificate in support of her Application for Permanent Residence or to Adjust Status (Form I-485). As noted by the District Director, after admitting at her adjustment interview that the submitted birth certificate was false, the applicant subsequently submitted a second birth certificate. This birth certificate listed the applicant's father as [REDACTED] and listed a different date and place of birth than the fraudulent birth certificate. Therefore, based on the applicant's own admission and the numerous discrepancies between the two documents, the AAO finds that the applicant's misrepresentation was, more likely than not, willful. The AAO further finds that the applicant's misrepresentation regarding her birth certificate was material in that it tended to shut off a line of inquiry regarding the applicant's ties to her home country and ability to support herself while in the United States. Such lines of inquiry were relevant to the alien's eligibility and which might well have resulted in a determination that she be excluded.<sup>1</sup> *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (AG 1961). Accordingly, the AAO finds

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<sup>1</sup> B-1/B-2 visas are issued to aliens having a residence in a foreign country which they have no intention of abandoning and who are visiting the United States temporarily for business or pleasure. Section 101(a)(15)(B) of the Act, 8 U.S.C. § 1101(a)(15)(B).

that the applicant is inadmissible under section 212(a)(6)(C)(i) for willfully misrepresenting a material fact in order to procure admission to the United States.

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 United States Citizenship and Immigration Service (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 of Immigration Appeals (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 a statement dated March 23, 2009, the applicant's husband states he could not move to Ecuador, because he does not know anyone in Ecuador and it would be difficult to find employment. Additionally, he states he would be "the illegal alien" in Ecuador, "with minimal language skills and an inability to earn well." The AAO acknowledges the claims made regarding the difficulties the applicant's husband would face in relocating to Ecuador.

The AAO acknowledges that the applicant's husband is a United States citizen and that relocation abroad would involve some hardship, including having to learn a new language. However, the AAO observes that the applicant's husband's mother was a native of Ecuador and the record does not establish that he has no family ties to Ecuador. Additionally, the AAO notes that the record does not contain any documentary evidence that demonstrates that the applicant's husband would be unable to obtain employment upon relocation that would allow him to use the skills he has acquired in the United States. Therefore, based on the record before it, the AAO finds that, even considering the potential hardships in the aggregate, the applicant has failed to establish that her husband would suffer extreme hardship if he relocated to Ecuador.

In addition, the record also fails to establish extreme hardship to the applicant's husband if he remains in the United States. On appeal, the applicant's husband states he does not want to be apart from the applicant. He states "[l]iving without [the applicant] would be a nightmare." Counsel states the applicant has had a positive effect on her husband. In a statement dated March 23, 2009, the applicant's brother-in-law states the applicant steered his brother "away from the negative aspects in life such as drugs and alcohol." The applicant's husband states the applicant "changed [him] a lot.... Being with her made [him] more ambitious, more mature.... [He] used to have anxiety and panic attacks, which have subsided since [the applicant] and [him] have been together." The AAO notes that the record establishes that the applicant's husband suffered from chest pains on March 22, 2009. *See medical records*, dated March 23, 2009. Counsel claims that the applicant's husband wants the applicant with him, "to have a honeymoon, raise a family, and live happily ever after." The applicant's husband states he works two jobs to support

himself and the applicant, and if the applicant returns to Ecuador, he would have to support two households. The AAO notes the applicant's husband's concerns.

The AAO acknowledges that the applicant's husband may suffer some emotional problems in being separated from the applicant. However, the AAO notes that while it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished her husband's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. The AAO finds the record to include some documentation of the applicant and her husband's income and expenses; however, this material offers insufficient proof that the applicant's husband will be unable to support himself in the applicant's absence. Additionally, the applicant has not distinguished her husband's financial challenges from those commonly experienced when a family member remains in the United States alone. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *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.