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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

H5

[REDACTED]

DATE: OCT 28 2011

Office: BALTIMORE, MD

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:

[REDACTED]

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, Baltimore, Maryland, 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 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 having gained entry into the United States by fraud or willfully misrepresenting a material fact. The record indicates that the applicant is married to a United States citizen, his mother is a United States citizen, and his father is a Lawful Permanent Resident of the United States, and is the beneficiary of two approved Petitions for Alien Relative (Form I-130s). 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.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated December 16, 2008.

On appeal, counsel for the applicant asserts the applicant has established extreme hardship to his qualifying relatives. Counsel submits additional evidence. *See Form I-290 and attachments.*

The record includes, but is not limited to, statements from the applicant describing the hardship claimed; a 2008 income tax return (Form 1040), a 2008 Wage and Tax Statement (Form W-2), and a July 31, 2009 earnings statement and an employment verification letter, for the applicant's spouse; an undated list of monthly household expenses and income for the applicant, submitted with the Form I-601; an undated list of monthly expenses, submitted on appeal; medical documentation relating to the applicant's mother and father; on-line materials on mitral valve disease and seizures; published country conditions information; and counsel's briefs and attachments. The record also includes documentation, including statements from the applicant's parents and a summative psychological report, previously submitted in connection with the applicant's prior Form I-601 application. 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) (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

The record reflects that on September 14, 1993, the applicant presented a passport and a Canadian landed immigrant document issued to another individual in an attempt to gain entry into the United States. He subsequently withdrew his application for admission and returned to Guyana on September

16, 1993. The record includes a sworn statement from the applicant signed at the time of his adjustment interview on November 3, 2009, that he last gained entry into the United States in March 1999 by using a passport belonging to another person, a citizen of either Trinidad or Guyana.

The applicant does not dispute that he gained entry by fraud or by willfully misrepresenting a material fact. The applicant is, therefore, inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act for having gained entry into the United States by willfully misrepresenting a material fact.

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

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

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 and the applicant's parents are the qualifying relatives 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.

Counsel asserts that the applicant’s spouse will suffer emotional and financial hardship without the applicant. Counsel states that the applicant works full-time while the applicant’s spouse cares for their child and that his monthly income of \$4,500 is sufficient to care for his family. Without his income, counsel contends, the applicant’s spouse will be forced to work to pay household expenses and about \$1,500.00 a month in daycare expenses. Counsel also asserts that the applicant’s spouse will be a single parent and that she and the child will become public charges and will not be able to visit the applicant in Trinidad.¹ Included in the record is an undated list of monthly household expenses and income for the applicant (submitted with the Form I-601 on February 19, 2008) indicating expenses of \$4,384. Another undated list (submitted with the appeal on January 15, 2009) indicates expenses of \$7,014.46.

It is noted, however, that the record includes an Earnings Statement from T-Mobile USA, Inc., the applicant’s spouse’s employer, which shows \$70,396.96 as her year-to-date earnings for the period ending July 31, 2009, and a 2009 employment verification letter indicating an annual salary of \$101,000.60. We find from the record that for 2008 (the year in which counsel indicated that the

¹ It is noted that the record establishes that the applicant is a native and citizen of Guyana.

applicant's spouse would be destitute without the applicant's income), her Form W-2 shows \$91,000+ in income. It is also noted that the record does not include documentation to substantiate the household bills claimed by the applicant. The AAO, therefore, is unable to assess the nature and extent of the financial hardship that the applicant's spouse would experience in the applicant's absence.

Counsel also asserts that due to the loss of companionship, consortium, and affection as a result of separation the applicant's spouse will be severely impacted and the resulting hardship will impact their child. However, the record does not include documentary evidence, such as medical evaluations or reports to establish the nature and extent of the emotional hardship the applicant's spouse would suffer in his absence or how her emotional hardship would affect her child. It is also noted that the applicant's child is not a qualifying relative.

The AAO finds that the applicant's spouse would suffer hardship due to separation. However, it has not been established that such hardship is beyond what would normally be expected as a result of separation.

Counsel states that the "[applicant] has a very close relationship with his parents" and due to his father's debilitating medical condition his father depends on the applicant to take him to different doctors and treatments. Counsel also asserts that the applicant's mother cannot deal with the stress of her husband's illness and work to pay household bills. Included in the record is a HUD-1 Settlement Statement indicating purchase of a residential property by the applicant's parents and a First Payment Letter for the applicant's parents which indicates a \$1,397.18 mortgage payment due on April 1, 2004.

In a July 19, 2001 letter, Dr. [REDACTED] states that the applicant's mother suffered from palpitations and ventricular ectopy. A May 1, 2004 letter from Dr. [REDACTED] states that the applicant's mother was "diagnosed with significant ventricular ectopy, mitral valve prolapse with mitral regurgitation, and periods of prolonged palpitations which at times render [her] dysfunctional and not controllable by the usual medications;" that "at times, day or night" the applicant's mother needs immediate medical attention and support; that the applicant's father has had a diagnosis of hypertension and seizure disorder; and recommends that he should not be allowed to have a driver's license. In a March 15, 2005 letter, Dr. [REDACTED] states that the applicant's mother "continues to have frequent anxiety attacks, and prolonged palpitations of the heart because of uncorrectable valvular lesion. Dr. [REDACTED] also states that the applicant's financial and emotional support is vital to his parents who depend on him for their daily needs. Dr. [REDACTED] indicates in a June 19, 2008 Operative Report and a June 24, 2008 letter, that the applicant's father was diagnosed with bladder cancer with lymphatic invasion. Medical documentation in the record establishes that both of the applicant's parents suffer from major illnesses. The applicant's father suffers from hypertension and a seizure disorder, and has bladder cancer with lymphatic invasion, and the applicant's mother suffers from an uncontrollable valvular lesion.

A March 17, 2004 affidavit from the applicant's mother, and March 17, 2005 affidavits from the applicant's parents, state that they depend on the applicant to assist them with daily tasks and to drive them everywhere. They also state that they have other family members in the area, but none of their other children can assist them because they live separately, have their own family obligations and cannot attend to their daily needs. The applicant's parents also state that they depend on the applicant to assist them financially. In a March 11, 2005 summative psychological report, Dr. [REDACTED] states that the

applicant's parents depend on him for financial, emotional and physical support. The AAO notes that the applicant's parents may suffer some hardship without the applicant to perform supportive duties and assist them financially. However, the record does not establish that the applicant's other siblings cannot perform the same supportive duties for the applicant's parents. It is noted that the applicant's parents state that they have other children in the area, but because they live separately and have their own family obligations these children cannot assist them. It is noted, however, the record indicates that since May 2008, the applicant has been living with his own family in Beltsville, Maryland, and the record does not establish how the applicant has been performing daily duties for his parents since he has been living with his own family apart from his parents. It is also noted that the record indicates that the applicant has a brother who resided with the applicant's parents in 2005, but there is no indication as to whether this brother can also perform support services for his parents. It is also noted that the record indicates that the applicant's mother is employed full-time, and the record does not include documentation to substantiate the applicant's parents' household bills. The AAO, therefore, is unable to assess the nature and extent of hardship, including the financial hardship, that the applicant's parents would experience in the applicant's absence.

Therefore, the AAO cannot determine the extent to which the applicant's parents depend upon the applicant for supportive services and whether the hardship they would experience in his absence would be extreme.

The AAO finds, therefore, that when considered in the aggregate, the applicant has failed to establish extreme hardship to any of his qualifying relatives in the United States as a result of separation.

Regarding relocation, it is noted that the applicant does not claim hardship to his spouse if she relocates to Guyana with him. In the absence of clear assertions from the applicant, the AAO may not speculate as to what hardships the applicant's spouse would encounter if she moves to Guyana. We must, therefore, conclude that the applicant has failed to establish that his spouse would experience extreme hardship upon relocation.

Counsel asserts that due to their medical condition the applicant's parents cannot relocate to Guyana. The record establishes that both of the applicant's parents have major medical conditions, the applicant's father has bladder cancer and in 2005 the applicant's mother was found to suffer from an uncontrollable valvular lesion resulting in prolonged palpitations of the heart. Counsel states that Guyana has poor medical treatment facilities, lacks proper medical technology and diagnostic equipments, and specialty doctors. The record includes a MDtravelhealth.com travel health information guide for Guyana and a November 21, 2007 U.S. Department of State, *Country Specific Information* for Guyana. These reports indicate a health care system in Guyana with limited capabilities to handle major illnesses due to a lack of appropriately trained specialists to provide treatment, sub-standard in-hospital care and poor sanitation. Due to their medical conditions, without reliable health care, when added to other difficulties normally created by relocation, the applicant's parents would suffer hardships in Guyana that would be beyond the norm.

The AAO finds, therefore, that the applicant has established that his parents would suffer extreme hardship if they relocate to Guyana due to his inadmissibility.

Although the applicant has demonstrated that his parents, the qualifying relatives, would experience extreme hardship if they relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. 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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case.

As discussed above, the applicant has not established extreme hardship to any of his qualifying relatives in the United States as a result of separation; therefore, the applicant is not eligible for a waiver under section 212(i) of the Act.

A review of the documentation in the record fails to establish that the applicant's qualifying relatives would experience extreme hardship as a result of the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(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.