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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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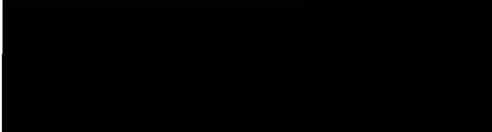


**U.S. Citizenship
and Immigration
Services**

#15



Date: Office: PHILADELPHIA, PA



SEP 30 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:



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 Field Office Director, Philadelphia, Pennsylvania, 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 attempting to procure 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 mother of two United States children. She is 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 and children.

The Field Office 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 Field Office Director*, dated December 2, 2008.

On appeal, the applicant, through counsel, claims that if the applicant's "application is denied," her spouse and children "will undoubtedly suffer extreme hardship." *Counsel's appeal brief*, filed January 6, 2009.

The record includes, but is not limited to, counsel's appeal brief; a declaration from the applicant; letters of support for the applicant and her husband; medical documents for the applicant's husband and son; employment verifications for the applicant and her husband; earning statements for the applicant's husband; mortgage documents, household and utility bills, tax documents, bank statements, and insurance documents; and marriage and divorce documents for the applicant. 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 on December 17, 1993, the applicant attempted to enter the United States by presenting a photo-substituted Republic of Trinidad and Tobago passport. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

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 children 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-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 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.

On appeal, counsel states “the idea [that] [the applicant’s husband] could uproot his entire life and move to Guyana is simply not possible.” Counsel claims that the applicant’s husband “suffers from severe cough and pneumonia and related health problems.” The AAO notes that on or about April 4, 2000, the applicant’s husband was diagnosed with a deviated nasal septum. See letter from [REDACTED] dated April 4, 2000. Additionally, medical documentation in the record establishes that the applicant’s husband suffers from low back pain, a cough, and chest pain. However, the AAO notes that no medical documentation has been submitted establishing the severity of the applicant’s husband’s medical issues or how often he receives treatment and/or monitoring for his medical conditions. Counsel states the applicant’s husband “needs the quality of health care and medicines that only the United States can provide,” and he “would not receive the proper treatment for his illness in Guyana.” The AAO notes that there is no documentation in the record establishing that the applicant’s husband cannot receive treatment for his medical conditions in Guyana or that he has to remain in the United States to continue his treatments. Counsel states that the applicant’s children “need the quality of education and services that only the United States can provide.” The AAO notes that medical documentation in the record establishes that the applicant’s oldest son has pain in his left calf; however, no abnormality was identified and the doctor could not explain why the applicant’s son was having pain in his calf. The AAO acknowledges that the applicant’s children may suffer some hardship in relocating to Guyana; however, the AAO notes that the applicant’s children are not qualifying relatives, and the applicant has not shown that hardship to

her children will elevate her husband's challenges to an extreme level. However, the AAO notes the concerns for the applicant's children. Counsel claims that it would "be impossible for [the applicant's husband] to find work and support his family in Guyana." The AAO notes the applicant's husband's concerns regarding the difficulties he and his children would face in relocating to Guyana.

The AAO acknowledges that the applicant's husband is a citizen of the United States and that he has resided in the United States for many years. However, the AAO observes that the applicant's husband is a native of Guyana and the record does not establish that he does not speak useful languages or that he has no family ties to Guyana. Additionally, the AAO notes that the record does not contain documentary evidence, e.g., country conditions reports on Guyana, that demonstrate 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. Further, other than counsel's claims, the AAO notes that the record does not include supporting documentary evidence that the applicant's children cannot receive quality education and services in Guyana. 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 returned to Guyana.

In addition, the record also fails to establish extreme hardship to the applicant's husband if he remains in the United States. In a declaration dated December 12, 2004, the applicant states her husband gets depressed and emotional. Counsel claims that "[s]ince the Government's NOID was issued, [the applicant's husband's] health began a steady decline." Counsel states "[p]ursuant to the medical doctor's diagnosis stress will do further damage to [the applicant's husband's] health which may cause him to be hospitalized." The AAO notes that medical documentation in the record establishes that the applicant's husband suffers from a deviated nasal septum, chest and low back pain, and a cough. However, there is no medical documentation in the record establishing that the stress that the applicant's husband is currently suffering from is aggravating his medical conditions, possibly to the point of needing to be hospitalized. Counsel states the applicant "knows how to care for [her husband] and [their] children," and her children will suffer extreme hardship without her. He claims that the applicant's husband "has special needs and without the love and support of [the applicant] here in the United States, those needs will not be met." Counsel states the applicant's husband "has no other family members who are able to assist him in improving the quality of his life." The AAO notes that the record does not establish through documentary evidence that the applicant's husband requires the assistance of the applicant because of his medical conditions. However, the AAO notes the applicant's husband's medical concerns.

In a declaration dated December 12, 2004, the applicant states her husband's "income cannot cover the mortgage and all the other bills." Additionally, she claims that they "are behind on [their] car and house payments." The AAO notes that documentation in the record establishes that in December 2004 and January 2005, the applicant and her husband were late on paying two bills. However, the AAO notes that no updated documentation has been submitted establishing that the applicant and her husband have defaulted on any of their loans or cannot pay their bills. The AAO also notes that according to the Contract between Sponsor and Household Member (Form I-864A) and a U.S. Individual Income Tax Return for 2006, the applicant's spouse made \$62,708 in 2006 and the applicant received only \$6,674 in

unemployment compensation. The applicant states her husband could not manage caring for their children as a single parent. The AAO notes the applicant's husband's financial and childcare 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.