

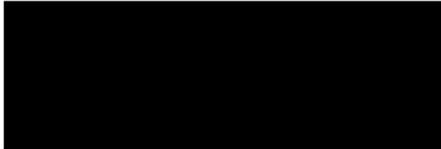
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



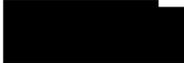
U.S. Citizenship  
and Immigration  
Services



115

Date: APR 12 2012

Office: MIAMI, FL

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Immigration and  
Nationality Act section 212(i); 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.

Thank you,

for Perry Rhew,  
Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, Miami, Florida, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on a motion to reopen. The motion to reopen will be granted, the prior decision of the AAO will be withdrawn and the appeal will be sustained.

The applicant, a native and citizen of Jamaica, was found inadmissible under Immigration and Nationality Act (INA or the Act) § 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact. The applicant seeks a waiver of inadmissibility pursuant to INA § 212(i), 8 U.S.C. § 1182(i) in order to reside in the United States with her U.S. citizen spouse. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her spouse. The applicant is also inadmissible under INA §212(a)(9)(A), as she was removed on October 27, 2000 pursuant to an expedited removal order and reentered the United States on November 24, 2000 without obtaining Permission to Reapply for Admission after Deportation or Removal.<sup>1</sup>

The Field Office Director concluded that the hardship that the applicant's U.S. citizen spouse would suffer did not rise to the level of extreme as required by the statute. The applicant appealed that decision and the AAO dismissed that appeal on December 30, 2008, finding that the hardship that the applicant's spouse would suffer upon separation from the applicant did not meet the extreme hardship standard under INA § 212(i). The applicant filed a motion to reopen the AAO decision.

On motion, counsel states that new facts, primarily a new heart condition suffered by the qualifying spouse, demonstrate that the applicant's spouse will, in fact, suffer extreme hardship if the applicant is not granted a waiver of inadmissibility. In support of the motion, counsel submitted a brief and exhibits, in addition to a supplemental filing with more exhibits.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the motion.

The applicant is inadmissible under INA § 212(a)(6)(C) and does not dispute her inadmissibility. A waiver is available to the applicant under INA § 212(i) dependent on her showing that the bar to her admission would impose extreme hardship on a qualifying relative. The applicant's U.S. citizen 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

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<sup>1</sup> In regards to her inadmissibility under INA § 212(a)(9)(A), the record does not contain an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). Consequently, this decision addressed only the Form I-601 decision.

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).

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 motion, counsel for the applicant states that the new evidence presented illustrates that the physical and financial hardship that the applicant's spouse would suffer would be extreme. In regards to the physical hardship, the record illustrates that the applicant's spouse was diagnosed with

Idiopathic Dilated Cardiomyopathy in 2009. The record also indicates that the applicant suffers from diabetes, hyperlipidemia, and drop foot. A letter from [REDACTED], a heart specialist, states that the applicant's spouse is receiving a series of treatments for his heart condition and requires close clinical follow-up. The record also indicates that the applicant's spouse relies on his spouse to assist him in controlling his diabetes, hypertension, and hyperlipidemia. The applicant's wife's support was confirmed by the applicant's spouse's physician, in addition to letters in the record from the applicant's spouse and a family friend. The applicant's spouse credits his spouse in assisting him to control his diabetes through diet and to working with him to lose over 120 pounds. Due to a family history of debilitating diabetes, the applicant's spouse is particularly concerned about the effect that his diabetes could have on his life should it not remain controlled with his wife's support.

The record also contains documentation that the applicant's spouse would suffer financial and physical hardship if he were to relocate to Jamaica with his spouse. The applicant, who is not a native of Jamaica, is able to work in the United States with his drop foot condition, but he would have difficulty in obtaining employment in Jamaica due to lack of protection for individuals with disabilities in that country. A United Nations report in the record indicates that less than 1% of the disabled community in Jamaica have paid employment. Although it is reasonable to expect that the applicant could obtain employment in Jamaica to care for her spouse, the AAO notes that the applicant's spouse is undergoing care for his heart condition in the United States that he would not be likely to receive in Jamaica, making relocation there a hardship.

The AAO finds that the applicant has presented evidence of new facts, particularly the applicant's spouse's heart condition and the role that the applicant plays in assisting her spouse maintain his health, that illustrate, when considered in the aggregate with financial hardship, that the hardship to the applicant's spouse if the applicant were to not be admitted as a lawful permanent resident would be extreme.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Morales*, in evaluating whether relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported,

service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives)...

*Id.* at 301. The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse would face if separated from the applicant or if he had to relocate to Jamaica, the applicant's assistance in the care of her U.S. citizen spouse, the length of time since the applicant's immigration violations, and her apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's material misrepresentations on two occasions in connection with her attempts to gain admission into United States and her subsequent unlawful presence in the United States.

The immigration violations committed by the applicant are very serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

The applicant has provided evidence of new facts that illustrate her eligibility for a waiver of inadmissibility under INA § 212(i). Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish she is eligible for the benefit sought. After a careful review of the record, the AAO finds that in the present motion, the applicant has met her burden. Accordingly, the motion to reopen is granted, the prior decision of the AAO is withdrawn and the appeal is sustained.

**ORDER:** The appeal is sustained.