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



H5

DATE **APR 18 2012** 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 applicant is a native and citizen of Guyana who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his lawful permanent resident mother and U.S. citizen child.

The District Director concluded that the applicant 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. See *Decision of the District Director*, dated June 23, 2009.

On appeal counsel asserts that the applicant's lengthy presence in the U.S., having a U.S. citizen child born during this time, and taking care of his permanent resident mother should be "sufficient to grant this waiver." See *Form I-290*, Notice of Appeal or Motion, received November 17, 2009.

The record contains, but is not limited to: Form I-290B; Forms I-601, I-485 and denials of each; hardship affidavit; applicant's amended tax returns, original tax returns, paystubs and employment letter; applicant's sister's tax returns, employment letter and Form I-864; applicant's earlier Form I-485 and denial letter; applicant's criminal record and records concerning his attempted U.S. entry, inadmissibility, deportation, and re-entry without inspection. The entire record was reviewed and considered in rendering this 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.

The record reflects that the applicant attempted to enter the United States on April 24, 1993 by presenting a fraudulent Trinidadian passport containing a U.S. visitor visa. The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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

- (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 the applicant or applicant's children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's mother is his only qualifying relative. 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.

The record reflects that the applicant’s mother is a 74-year-old native of Guyana and lawful permanent resident of the United States. The applicant’s mother states that she is diabetic, the applicant takes her to doctors’ appointments, and without him she would have nobody who could care for her. Why none of the applicant’s siblings can care for their mother is not addressed on appeal. Counsel asserts that the applicant’s mother’s gall bladder was removed and she needs constant care. The record contains no documentary evidence related to the applicant’s mother’s health, any medical condition(s) she may suffer, or the applicant’s involvement in her medical care. Going on record without supporting documentation is not sufficient to meet the applicant’s burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant’s mother states that the applicant has been taking care of her by providing “the rent, food and other life’s necessities,” and without him she would not have the finances she needs to live. Counsel asserts that of all his siblings, the applicant is closest to his mother and “provides most of all financial support that is needed for her.” No supporting documentary evidence has been submitted to demonstrate that the applicant pays his mother’s rent or other expenses. On Form I-601, the applicant lists two sisters residing in the [REDACTED] who on May 10, 2008, signed a Form I-864 as a joint sponsor for the applicant along with their mother. On Form I-864, the applicant’s mother indicates that she has

four dependents and a total household of six individuals. On appeal, the applicant submits amended federal tax returns for tax years 2004 through 2008. Each has been amended to include the applicant's mother as a dependent, though unlike the returns previously submitted these do not include proof of filing with the Internal Revenue Service. While the AAO recognizes that the applicant's mother may experience a reduction in overall household income in the event of the applicant's removal, the evidence is insufficient to establish that the applicant is her sole economic provider or that she would be unable to meet her financial obligations in his absence.

The applicant's mother states that emotionally, the applicant means everything to her and she would be severely depressed if he has to leave the United States. Though not asserted on appeal, the AAO has considered the applicant's mother's advanced age and recognizes that separation from her son will cause some emotional difficulty for her. This factor along with others has been considered in the aggregate in reaching a decision.

Assertions have been made concerning hardship to the applicant's daughter. As discussed above, hardship to the applicant's children can be considered only insofar as it results in hardship to the applicant's qualifying relative – here the applicant's mother. The applicant's mother states that her now 14-year-old granddaughter, [REDACTED], is deeply attached to her father and his removal would cause emotional disturbances and greatly affect her ability to conduct a normal life in the United States. Counsel asserts that the applicant's daughter will miss her father's love and affection and his financial support. No documentary evidence has been submitted to demonstrate economic or other support by the applicant or addressing [REDACTED] emotional condition. While the AAO recognizes the emotional difficulties inherent in separation from one's father, the evidence is insufficient to establish uncommon or significant hardship to the applicant's daughter such that it would cause extreme hardship to the applicant's mother.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's mother. The difficulties described, however, do not take the present case beyond those hardships ordinarily associated with removal or inadmissibility of a family member, and the evidence in the record is insufficient to demonstrate that the challenges to the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Relocation-related hardship to the applicant's mother has not been asserted and the AAO will not speculate in this regard. Accordingly, the AAO finds that the evidence is insufficient to demonstrate that the applicant's lawful permanent relative mother would suffer extreme hardship if she were to relocate to Guyana to be with the applicant.

The applicant's mother states that her granddaughter, [REDACTED], knows no one in Guyana, nothing about life there, and it would be a complete change of lifestyle were she to relocate to join her father. She states that [REDACTED] would be deprived of quality education, training, and medical care in Ghana. As noted above, the applicant's mother is the only qualifying relative in this proceeding. The evidence is insufficient to establish uncommon or significant relocation-related hardship to the applicant's daughter such that it would cause extreme hardship to the applicant's mother.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i)(1) 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.