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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

[Redacted]

H5

DATE: APR 18 2012 OFFICE: BALTIMORE, MD FILE: [Redacted]

IN RE: [Redacted]

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:

[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.

Thank you,

Perry Rhew
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 sustained.

The applicant, a native and citizen of Guyana was found inadmissible under INA § 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresentation due to her attempted entry into the United States on the Visa Waiver Program using a British passport belonging to another individual. The applicant is the beneficiary of two approved Petitions for Alien Relative (Form I-130), one filed by her U.S. citizen spouse and the other by her U.S. citizen mother. The applicant seeks a waiver of inadmissibility pursuant to INA § 212(i), 8 U.S.C. § 1182(i) based on extreme hardship to her U.S. citizen mother and her U.S. citizen spouse.

In a decision dated January 7, 2010, the District Director concluded that the required standard of proof of extreme hardship to a qualifying relative was not met and the application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility but states that the applicant's U.S. citizen spouse and U.S. citizen mother will suffer extreme hardship if the applicant is not admitted as a lawful permanent resident.

In support of the waiver application, the record includes, but is not limited to, briefs from counsel for the applicant, biographical information for the applicant and her spouse, biographical information for the applicant's mother, medical and psychological records for the applicant's mother, employment records for the applicant's spouse, documentation regarding the applicant's professional certification, affidavits from the applicant's mother, a letter from the applicant, country conditions information for Guyana, and documentation of the applicant's immigration history.

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 appeal.

The District Director determined that the applicant was inadmissible under INA § 212(a)(6)(C), which provides, in pertinent part:

(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.

...

On November 26, 1999, the applicant attempted to enter the United States under the Visa Waiver Program at the Miami International Airport Port of Entry using a British passport belonging to another individual. She was apprehended during secondary inspection, found to be inadmissible

under INA § 212(a)(6)(C), and was paroled into the United States for asylum only removal proceedings. The applicant was ordered removed by the Immigration Judge on November 14, 2000 and her appeal to the Board of Immigration appeals was denied on January 10, 2003. An unexecuted order of removal exists the applicant's case, however, USCIS retains jurisdiction over the applicant's application for adjustment of status, and as a result, the corresponding application for a waiver of inadmissibility pursuant to 8 CFR § 245.2(a)(1).¹ The applicant is inadmissible under INA § 212(a)(6)(C) and does not contest this ground of inadmissibility on appeal.

In regards to the applicant's inadmissibility under INA § 212(a)(6)(C), the Act at Section 212(i) states in pertinent part:

(i) Admission of Immigrant Inadmissible for Fraud or willful Misrepresentation of a Material Fact

(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 in this case is the applicant's U.S. citizen spouse or her U.S. citizen mother. Hardship to the applicant is not directly relevant under the statute and will be considered only insofar as it results in hardship to the applicant's spouse or mother. 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

¹ An application for Permission to Reapply for Admission after Deportation or Removal (Form I-212) has not been filed in this case and is not under consideration on appeal. As such, the applicant remains inadmissible under INA § 212(a)(9)(A).

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.

In this case, the applicant has two qualifying relatives. In regards to hardship to the applicant's U.S. citizen mother, which we will consider first, the record illustrates that the applicant's mother

is a 60-year-old widow who resides in [REDACTED] with the applicant and suffers from diabetes, depression, anxiety, and hypercholesterolemia. A letter from [REDACTED] states that the applicant's mother has been a patient of the University of Maryland Medical System since 2002 where she has been under treatment for the above mentioned conditions. The record indicates that the applicant's mother's diabetes is well-controlled with diet and medication. The applicant's mother reported that she has suffered from anxiety and depression since being robbed and raped in her home in Guyana in November 1999, and has periodically been prescribed medication for those conditions. Licensed Clinical Social Worker [REDACTED] who has met with the applicant's mother on seven occasions over the period of three years, states in her report that the applicant's mother suffers from Post-Traumatic Stress Disorder in addition to depression and anxiety. The social worker's report also indicates that the applicant is "instrumental" in assisting her mother in testing her blood sugar levels and blood pressure every day, as well as serving as a source of emotional and physical support for her mother. Although the applicant's mother has other adult children who reside in the United States, the record indicates that the applicant is the only child that resides with her mother in Baltimore and provides her with the daily assistance that the record indicates is crucial to her well-being. As a result, we find that the applicant's mother would suffer extreme hardship if she were separated from the applicant.

Documentation submitted by the applicant also illustrates that the applicant's mother would suffer extreme hardship if she were to relocate to her native Guyana to reside with the applicant. The AAO takes notes of the current country conditions in Guyana as reported by the U.S. Department of State. See *Guyana Country Specific Information, U.S. Department of State*, dated October 6, 2011, available at http://travel.state.gov/travel/cis_pa_tw/cis/cis_1133.html. According to the Department of State, "care is available for minor medical conditions, although quality is very inconsistent. Emergency care and hospitalization for major medical illnesses or surgery are very limited, due to a lack of appropriately trained specialists, below standard in-hospital care, and poor sanitation." Additionally, the Department of State reports that "[s]erious crime, including murder and armed robbery, continues to be a major problem. The murder rate in Guyana is three times higher than the murder rate in the United States." As such, taking into account the applicant's mother's medical conditions, the treatment she is receiving for those conditions in the United States, the trauma that she previously suffered in Guyana as a result of a violent assault, and her lack of family ties there, we find that the applicant's mother would suffer extreme hardship should she have to relocate to reside with the applicant. As we have found extreme hardship to one of the applicant's qualifying relatives, we do not need to analyze the hardship to the applicant's other qualifying relative, her spouse.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 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-Moralez*, 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 adverse factors in the present case include the applicant's misrepresentation for which she now seeks a waiver and her unlawful presence in the United States after the entry of the removal order in her case. The favorable and mitigating factors are the hardship to the applicant's U.S. citizen mother, the important role that the applicant plays in the life of her mother, the positive references that the applicant has received from numerous members of her community, the applicant's certification as a nursing assistant, and her lack of criminal record.

The AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.