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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**



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APR 26 2012

Date: Office: NEW YORK (GARDEN CITY) 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,

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Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York. The matter 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 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 sought to procure, and having procured, admission to the United States through fraud or misrepresentation. The applicant is married to a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant does not contest these findings of inadmissibility. Rather, he is seeking a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The district director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the District Director, September 23, 2006.*

On appeal, counsel asserts that USCIS misapplied the law and failed to consider the evidence in finding the applicant had not shown undue hardship to a qualifying relative. In support of the appeal, counsel submits the applicant's wife's statements and supporting documentation including, but not limited to, exhibits to the underlying waiver application: naturalization, marriage, and birth certificates; passport copies; financial information, including tax returns and W-2s; and a criminal court disposition. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

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.

Section 212(i)(1) of the Act provides:

The [Secretary] may, in the discretion of the [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 [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 can be considered only insofar as it results in hardship to 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 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 shows that the applicant attempted to enter the United States from Canada in December 1994 with a fraudulent Barbadian passport and U.S. visa and was found to be inadmissible for fraud and misrepresentation and refused admission. According to the record, he later entered the United States five times between April 23, 1997 and February 10, 2002 using his brother's Guyanese passport, and he states he has not departed since the 2002 entry.

The applicant's wife contends she will suffer emotional and psychological hardship if she remains in the United States while the applicant resides abroad due to his inadmissibility. She claims his deportation would cause her emotional distress that would affect her psychological and physical health. In support of these claims, the applicant's wife notes that, in addition to having a child with the applicant, she has another child from a previous relationship, and the applicant is a father figure to both. Although she asserts that the applicant's absence will cause hardship to the children, we note that their hardship may only be considered to the extent it causes hardship to a qualifying relative. Besides her statement that she needs her husband's help, the record contains no evidence regarding the emotional or psychological impact of separation from the applicant. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proving emotional hardship in these proceedings. *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)). Without corroboration, her statements do not satisfy the applicant's evidentiary burden. Further, the applicant's wife gives no indication she would be unable to visit her husband in Guyana to ease the pain of separation.

Regarding financial hardship, the record contains no claim that separation will result in financial hardship to the qualifying relative (only that she will suffer financially if she moves to Guyana with her husband). We note documentation showing the applicant's wife earns more than half of their household income. The evidence on record, when considered in the aggregate, fails to establish that any emotional, psychological, and financial hardship the applicant's wife would experience if she were to remain in the United States without the applicant would rise to the level of extreme.

The qualifying relative also contends she would suffer extreme hardship in the event she relocated to Guyana with the applicant. She is a U.S. citizen who claims extensive ties to the United States, where she reports working, attending college, and living since the age of 13. According to her statement, her entire immediate family immigrated with her; she claims that she maintains a close relationship with both parents and her four siblings and all of them are living in New York. She also asserts that moving overseas will entail forfeiture of accrued pension and pay benefits and loss of the long-term employment by which they were acquired. The record contains joint tax returns and W-2

forms reflecting the qualifying relative's earnings from several sources, as well as her primary wage earner status. Absent from the record is any documentation from the claimed family members indicating their place of residence or stating that she shares a close bond with them. Finally, the record contains no information about her remaining ties to Guyana or ability to work there, except for her own assertion she has hardly any contacts to the country.

As noted above, the qualifying relative's unsupported statements do not satisfy the applicant's evidentiary burden to establish hardship. While not unmindful that moving overseas would entail challenges, we note that the documentation in the record, considered in its totality, reflects that the applicant has not shown his wife would suffer extreme hardship were she to move back to the country where she was born. Accordingly, the AAO concludes the applicant has not established that a qualifying relative would suffer extreme hardship by relocating to live with her husband.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's wife's situation, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.