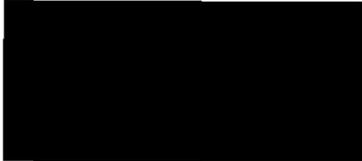


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
U.S. Citizenship
and Immigration
Services



HS

Date: **AUG 29 2012** Office: PANAMA CITY, PANAMA



IN RE: 

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Riew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Panama City, Panama, 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 record indicates that the applicant is married to a lawful permanent resident of the United States and is the father of a lawful permanent resident child and two Guyanese citizen children. He 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 his spouse and child.

The Field Office Director found that the applicant 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 September 9, 2010.

On appeal, the applicant, through counsel, claims that the applicant has met his burden of proof in establishing that his wife and daughter will suffer extreme hardship if he is not permitted to immigrate. *Form I-290B, Notice of Appeal or Motion*, filed October 12, 2010. Additionally, counsel states the applicant's wife is suffering from medical conditions for which she would not receive adequate care in Guyana. *Id.* Further, counsel states that most of the applicant's wife's family resides in the United States. *Id.* Counsel also submits new evidence of hardship on appeal.

The record includes, but is not limited to, statements from the applicant, his wife, and daughter; a psychological evaluation of the applicant's wife; and medical documents for the applicant's wife. 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) 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(i) of the Act provides, in pertinent part, that:

- (1) 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 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.

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.

In the present case, the record indicates that in 1990, the applicant applied for a crewmember's visa by presenting a false application to U.S. consular staff at the Embassy in Georgetown. In the Form I-601, the applicant admits that he presented the false application to the U.S. embassy but he claims that it was completed without his knowledge. In a statement dated July 20, 2009, the applicant states he was trying to obtain employment as a sailor in November 1989. When he reported to the company on the day he was to travel to meet the ship, he was told that the other sailors had departed for England with their visas the day before by bribing the shipping agent. The applicant then gave the shipping agent \$20,000 to secure his flight, and approximately six months later, the shipping agent provided him with an envelope to take to the U.S. Embassy. When he checked the contents of the envelope at the embassy, he noticed the application was completed and signed. He gave the application to the consular staff, and the application was determined to be fraudulent. The applicant claims that he had no idea he was doing something improper until the consular staff informed him that paying the shipping agent was bribery.

With respect to the willfulness of the applicant's misrepresentation, the Department of State Foreign Affairs Manual, Volume 9 § 40.63 N5, in pertinent part states that, "[t]he term 'willfully' as used in INA 212(a)(6)(C)(i) is interpreted to mean knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise." The AAO finds the applicant's claim that he is not inadmissible to the United States through the misrepresentation of a material fact because he was unaware that he was submitting a false application to a U.S. consular officer to be unpersuasive. The AAO observes that in waiver proceedings, the burden of proof is on the applicant to establish admissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. Although the applicant claims he obtained the application from the shipping agent, he admits to paying the agent \$20,000 after learning about the other sailors who had bribed the shipping agent, and that he noticed that the application was completed and signed before he submitted it to the U.S. consular officer. If the preponderance of the evidence shows that "any fraud was not intentional or with the intent to deceive, or that the misrepresentation was not willful," then it should be determined that the applicant has met his burden of proving that he is not inadmissible under section 212(a)(6)(C)(i) of the Act. *See Memorandum from Donald Neufeld, Act. Assoc. Dir., Dom. Ops., Lori Scialabba, Assoc. Dir., Refugee,*

Asylum and Int. Ops., Pearl Chang, Act. Chief, Off. of Pol. and Stra., U.S. Citizenship and Immigration Serv., to Field Leadership, "Section 212(a)(6) of the Immigration and Nationality Act. Illegal Entrants and Immigration Violators," dated March 3, 2009. However, because the applicant admitted to checking, then submitting the application that was completed and signed to the U.S. consular officer, and does not provide evidence to corroborate his claim that he was unaware of the fraud, the AAO finds that the applicant has not met his burden of proving he is not inadmissible. Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) for willfully misrepresenting a material fact in order to seek admission into the United States.

A waiver of inadmissibility under section 212(i) of the Act is dependent first 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 and his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

The applicant's wife states that she and their daughter cannot move back to Guyana because it is unstable and has a high crime rate. She claims that she sends money to the applicant because he does not earn enough to support himself. Counsel states the applicant's wife is experiencing tremendous hardship, has been losing her hair, is being treated for hypertension, and will not receive adequate medical care in Guyana. Medical documentation in the record establishes that the applicant's wife suffers from anemia, uterine fibroids, hypertension, low back pain, leg and foot pain, and headaches. Additionally, the applicant's wife states their daughter has a cyst on her left kidney and needs follow-up treatment. She states she wants their daughter to complete her education in the United States, as there are more opportunities for her in the United States. She also states her entire extended family is in the United States. In an undated psychological evaluation, [REDACTED] reports that the applicant's wife helps care for her disabled brother during the evening hours.

The AAO acknowledges that the applicant's wife has resided in the United States for many years and that relocation abroad would involve some hardship. The applicant's wife, however, is a native of Guyana, and it has not been established that she is unfamiliar with the culture or that she has no family ties there. Evidence in the record indicates that their two oldest children reside in Guyana. *See psychological evaluation of [REDACTED]* Additionally, the record does not contain documentary evidence showing that the applicant's wife would be unable to obtain employment in Guyana that would allow her to use the skills she has acquired in the United States. Regarding the applicant's wife's

and daughter's medical conditions, the applicant provided no evidence to corroborate counsel's assertion that they would be unable to obtain adequate medical treatment in Guyana. Without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, though the applicant's wife expresses security concerns about Guyana, no documentary evidence was submitted supporting her claim. Regarding the hardship that the applicant's daughter may experience in Guyana, she is not a qualifying relative under the Act, and the applicant has not shown that hardship to their daughter would elevate his wife's challenges to an extreme level. Additionally, regarding the applicant's wife caring for her disabled brother, no details have been provided to assess how her brother's hardship would elevate her challenges to an extreme level. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Guyana.

In addition, the record fails to establish extreme hardship to the applicant's wife if she remains in the United States. The applicant's wife states she needs the applicant for physical, financial, and emotional support. They have been married for over 25 years and separated only for brief vacations. In a letter dated October 1, 2010, the applicant's daughter states that it hurts her to see her mother crying and unable to sleep because of the separation from the applicant; she also is struggling with meeting expenses. [REDACTED] diagnosed the applicant's wife with adjustment disorder with mixed anxiety and depressed mood. He claims that separation from the applicant "will lead to continued deterioration of functioning" for the applicant's wife. He states her emotional distress is affecting her "occupational and social functioning; as well as her parental role." The applicant's wife states their daughter is suffering from the separation from the applicant. [REDACTED] states that based on information from the applicant's wife, the separation could possibly lead "to an emotionally destructive cycle" for their daughter. The applicant's wife states the separation is also affecting their daughter's school work. She claims that their daughter, normally an "excellent student," failed a state academic examination twice.

In an affidavit dated June 23, 2012, the applicant's wife states she needs the applicant in the United States because her medical condition has been deteriorating. As noted above, medical documentation in the record establishes that the applicant's wife suffers from anemia, uterine fibroids, hypertension, low back pain, leg and foot pain, and headaches. She claims that her medical conditions have restricted her ability to work, she works limited hours, and she requires therapy three times a week. She states that because of her reduced hours at work, she earns less than \$200.00 a week, and her financial situation is difficult. She states she and their daughter live alone. The applicant's daughter states her mother is struggling to pay their bills. Additionally, she would like to attend college in the United States, but without the applicant's support, she does not believe it is possible.

The AAO acknowledges that the applicant's wife is suffering some emotional difficulties in being separated from the applicant. While it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished his wife's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. With

respect to the applicant's spouse's medical hardship, although the record establishes that she suffers from various medical issues, the medical documentation in the record does not establish that separation from the applicant has elevated her symptoms or that she requires the applicant's assistance because of her medical conditions. Though the applicant's wife refers to financial difficulties, the record does not contain evidence corroborating the applicant's wife's statements that she is unable to support herself in the applicant's absence. Additionally, the applicant has not distinguished his wife's financial challenges from those commonly experienced when a family member remains in the United States. The AAO also notes that the applicant's daughter may be experiencing hardship in being separated from the applicant and his wife is affected by their daughter's hardship, but he has not shown that her hardship has elevated his wife's challenges to an extreme level. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his lawful permanent resident spouse as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(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.