



U.S. Citizenship  
and Immigration  
Services

HLS

[REDACTED]

DATE: **DEC 05 2012** OFFICE: ATLANTA, GA

IN RE:

APPLICANT: [REDACTED]

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:

[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.

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,

Ron Rosenberg

Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guatemala who has resided in the United States since April 1996, when she entered without inspection. She 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 having attempted to procure benefits under the Act through fraud or misrepresentation. The applicant is the daughter of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. 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 (U.S. relatives).

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative given her inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated June 10, 2011.

On appeal, counsel contends that the applicant's father will experience emotional, physical, and medical hardship without the applicant present in the United States, hardship which would be compounded by his added responsibilities with respect to his granddaughter. Counsel additionally asserts that the father will be unable to obtain sufficient medical care in Guatemala, and he will be suffer the consequences of adverse country conditions.

The record includes, but is not limited to, statements from the applicant and her father, a letter from the applicant's daughter, a psychiatric evaluation, articles on psychological and medical conditions, educational and financial documents, medical records, documentation on conditions in Guatemala, evidence of birth, marriage, residence, and citizenship, and other applications and petitions. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act 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.

Section 212(i) of the Act provides:

- (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 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.

In the present case, the record reflects that the applicant, a Guatemalan who entered the United States without inspection in April 1996, indicated on a Form I-589 Application for Asylum and for Withholding of Deportation that she was a Salvadorean who entered without inspection in 1988 in order to qualify for benefits under the settlement in *American Baptist Church v. Thornburgh*, 760 F.Supp. 796 (N.D. Cal. 1991). The applicant also filed for asylum as the derivative beneficiary of her boyfriend, who she claimed was her spouse, in November 1997. She additionally filed an Application for Employment Authorization in 1998 based on this same fraudulent marital relationship. Inadmissibility is not contested on appeal. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure benefits under the Act through fraud or misrepresentation. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. Citizen parent.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 applicant’s father claims he is older and has medical issues. A physician in Guatemala indicates that the father has type II diabetes, arterial hypertension, anemia, and mixed hyperlipidemia. The father states that he lives alone in California, is often lonely, and suffers from emotional problems. A psychiatrist opines that the father has adjustment disorder with mixed anxiety and depressed mood, also stating that the father has a strong emotional bond with the applicant, who lives in Georgia. The psychiatrist’s evaluation additionally indicates that the psychological effect of future separation from the applicant would adversely impact his medical conditions. The applicant affirms if she had to depart the United States, she would leave her teenage daughter with her father, who would be ill equipped to take on that responsibility. She states that her daughter was born in the United States, and has no knowledge of Guatemala.

The father asserts he would also suffer extreme hardship upon relocation to Guatemala. He claims natural disasters, lack of food, and crime in the country make it a terrible country to return to. A letter from a Guatemalan physician indicates that it would be better for the father to be established in a town that has medical and therapeutic resources more suitable than those which are available in [REDACTED] Guatemala. Counsel submits several articles on the living conditions, natural

disasters, crime, and medical care in Guatemala, contending that the applicant's father, who is 74 years old and has multiple medical conditions, cannot relocate to the country of his birth.

The psychiatrist opines that the applicant's father would experience severe emotional difficulties without the applicant present in the United States, but the record indicates that they have been living over 2,000 miles apart for the past several years. Their continued voluntary separation contradicts the psychiatrist's assertions on emotional hardship in his report. Furthermore, it is not evident from the record how the applicant assists or can assist her father with his medical issues when she resides in Georgia and he lives in California.

While the AAO acknowledges that the applicant's parent would face difficulties as a result of the applicant's inadmissibility, such as added familial responsibilities with respect to his granddaughter, we do not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the medical, emotional or other impacts of separation on the applicant's parent are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant returns to Guatemala without her parent.

The applicant has shown that her father would experience extreme hardship upon relocation to Guatemala. A letter from a Guatemalan physician indicates that the father would have difficulty accessing treatment for his medical conditions in the area of Guatemala where he would reside. Moreover, although the applicant's father is a native of Guatemala, the record reflects that he has lived in the United States, has been working for the same employer since 2007, and has some ties to the United States. Although the AAO notes that the U.S. Department of State has not issued a current travel warning on Guatemala, the applicant has submitted documentation to show that her father, a 74 year old man with medical conditions, will find it difficult to live in Guatemala given the infrastructure, safety issues, and other concerns.

In light of the evidence of record, the AAO finds the applicant has established her parent's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, medical, or other impacts of relocation on the applicant's parent are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that he would experience extreme hardship if the waiver application is denied and the applicant's parent relocates to Guatemala.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*,

*also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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 her U.S. Citizen parent as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for a waiver of grounds of inadmissibility under section 212(i) of the Act, 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.