



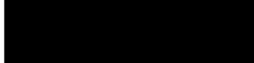
U.S. Citizenship
and Immigration
Services



#15

Date: **DEC 06 2012**

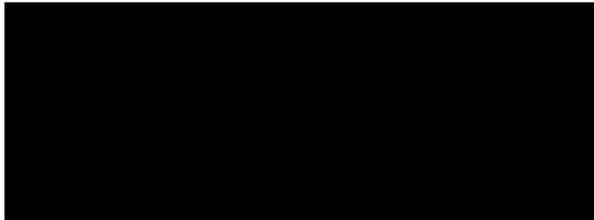
Office: PANAMA CITY

FILE: 

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Panama City, Panama. 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 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 attempting to obtain an immigration benefit through fraud or misrepresentation.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director*, dated June 30, 2011.

On appeal, the applicant's attorney indicates that the qualifying spouse is suffering from extreme hardship in the United States. However, the applicant's attorney indicates that his prior attorney did not provide sufficient evidence of his claim, and he supplements the record with additional evidence.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601) and Notice of Appeal or Motion (Form I-290B); an appeal statement; a letter and declaration from the qualifying spouse; a psychological assessment of the qualifying spouse and their children; country-conditions materials; a letter regarding the qualifying spouse's enrollment in school; relationship and identification documents for the applicant, qualifying spouse and their children; financial documentation; an approved Form I-130 for the applicant's first marriage; an Application for Immigrant Visa and Alien Registration (Form DS-230) and a denied Form I-485. 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, 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. 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 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 in March 2001, the applicant married a U.S. citizen, who submitted a Petition for Alien Relative (Form I-130) on his behalf. In August 2002 the applicant was granted conditional permanent resident status after his Form I-130 and Application to Register Permanent Resident or Adjust of Status (Form I-485) were approved. However, his status was terminated in 2005, because he failed to apply for the removal of the conditional basis of his residence and had returned to Guyana in 2004. The applicant admitted during the interview for his current visa that his 2001 marriage was entered into solely for the purpose of obtaining immigration benefits. The qualifying spouse's declaration also indicates that the applicant's marriage in the United States in 2001 was not bonafide and entered into for the purposes of obtaining status in the United States.

The applicant applied for an immigrant visa in 2010 based on his derivative status as the spouse of an individual who had been classified as the married daughter of a legal permanent resident. The Field Office Director found the applicant 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), as an alien who has sought to procure a visa, other documentation, or admission to the United State through fraud or misrepresentation, as outlined above. The applicant does not contest this finding of inadmissibility. Rather, he 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 lawful permanent resident spouse and two lawful permanent resident children.

The AAO finds that the applicant failed to establish that his qualifying spouse is suffering extreme hardship as a consequence of his separation from her. The qualifying spouse, in her declaration, states that she is struggling financially and emotionally in the United States without the applicant to help her. However, the record does not contain documentation demonstrating the qualifying spouse's or applicant's income and expenses. The financial evidence in the record documents the financial situation of the applicant in 2001, and such documents were submitted with his Form I-485 based upon his fraudulent marriage. Although the assertions of the applicant's spouse are relevant and have been taken into consideration, little weight can be afforded them in the absence

of supporting evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. 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)).

With regard to the qualifying spouse's emotional hardships, she states that she is suffering from depression and stress-related illnesses and that the applicant's physical presence will help to alleviate her condition. The record also contains a psychological report indicating that she is suffering from adjustment disorder with mixed anxiety and depressed mood and that her symptomatology over time will "probably evolve" into a major depressive disorder. However, the evaluation does not establish that the hardship the applicant's spouse is currently experiencing is beyond the hardships normally associated with long-term separation from a spouse.

The applicant's spouse's declaration and the psychological report both indicate that the children are also suffering without the presence of the applicant in their lives. The record, however, does not indicate how the hardships of their children affect the qualifying spouse. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. 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 or his children will not be separately considered, except as it may affect his spouse. The AAO recognizes that the applicant's lawful permanent resident spouse will endure hardship as a result of continued separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not been established that the applicant's lawful permanent resident spouse is suffering extreme hardship due to the applicant's inadmissibility.

The AAO also finds that the applicant has not met his burden of showing that his qualifying spouse, a native of Guyana, would suffer extreme hardship if she relocated to Guyana to be with him. The applicant's spouse indicates that, if she left the United States, she could not earn enough money in Guyana to keep her children in school in the United States. However, she does not specifically state how her inability to educate her children in the United States will affect her. Moreover, she states that she does not have a safety net in Guyana, as her family mostly lives overseas, and she resigned from her old job in Guyana and sold her belongings there. She also indicates that she fears that she will be unemployed for a long period of time in Guyana. However, the record does not contain any current documentation to demonstrate whether the applicant is working in Guyana or to establish the current financial situation of the qualifying spouse. As such, the record does not contain adequate documentation to demonstrate that the qualifying spouse would face financial hardship, if she relocated to Guyana. Further, the applicant's spouse asserts that Guyana is a poor country with a poor human rights record, rampant crime and poor education and health services. The record contains country-conditions reports supporting such assertions. However, the qualifying spouse only recently relocated to the United States in February 2010, and she does not indicate whether she encountered any issues with human rights, crime, education or healthcare while living in Guyana. Even were the AAO to take notice of general conditions in Guyana, the record lacks evidence demonstrating how the

applicant's spouse would be affected specifically by any adverse conditions there. The current record does not establish that the applicant's spouse would experience extreme hardship upon relocating to Guyana.

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 legal permanent resident spouse 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 application for 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.