



**U.S. Citizenship
and Immigration
Services**

[REDACTED]

115

Date: **DEC 19 2012** Office: PANAMA CITY FILE: [REDACTED]

IN RE: Applicant [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

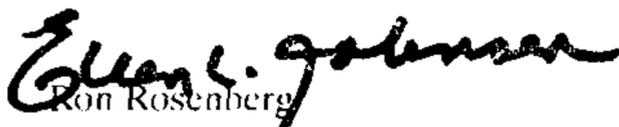
ON BEHALF OF APPLICANT:
[REDACTED]

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, Panama City. The matter 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 Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and has a U.S. citizen mother. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the field office director failed to consider the totality of the circumstances of the case and failed to consider some of the evidence in the record, including a letter addressing the applicant's wife's anxiety and depression, evidence addressing the couple's son's medical condition, and newspaper articles addressing conditions in Guyana.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED], indicating they were married on July 3, 2004, in Canada; letters from [REDACTED] copies of the birth certificates of the couple's two U.S. citizen children; a medical report of [REDACTED]; a letter from the couple's son's physician and copies of medical records; newspaper articles; letters of support; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

In general.—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) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien

In this case, the record shows, and the applicant does not contest, that he attempted to enter the United States in March 1990 using a counterfeit Temporary Resident card. The applicant was ordered deported by an immigration judge and returned to Guyana in April 1990. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's wife, [REDACTED], states that she and her husband have two U.S. citizen children. According to [REDACTED], it is virtually impossible for her to raise her two children on her own without her husband and she states she cannot work because her children are young. In addition, she states their son was born with a physical defect called bilateral hydronephrosis and severe bilateral vesicoureteral reflux for which he had surgery in September 2009. [REDACTED] also states that she takes medication on a daily basis to try to cope with the depression caused by being separated from her husband. According to [REDACTED], her psychiatrist stated that at some point she will have a nervous breakdown or other major anxiety based on trauma. She contends that her psychiatrist recommends she seek help in the United States and see a psychiatrist on a weekly or monthly basis. However, [REDACTED] contends she cannot afford that kind of medical treatment because she has to stay home to care for the children. Additionally, she states she lives with her parents and is a burden on them. Furthermore, [REDACTED] contends she cannot relocate to Guyana to be with her husband because there is insufficient medical care there, and there is child abuse and corporal punishment in the schools. In addition, she states that when her son was five months old and was visiting the applicant in Guyana, her son got a fever and the doctors could not diagnose his problem. According to [REDACTED], a doctor found that her son had a urinal infection and bilateral reflux and stated that nothing could be done in Guyana and that he would die if he stayed in Guyana. She states that doctors in the United States were able to give her son a new life and that her son needs regular check ups to monitor his kidneys, one of which is functioning at only 24% and the other at 76%. [REDACTED] contends there is no pediatric nephrologist in Guyana. Moreover, [REDACTED] states that Guyana is in total political unrest and is unsafe. She states that her husband took over his father's business following his father's violent death in Guyana. She states she worries a similar fate will become of her husband in Guyana. For instance, [REDACTED] recounts that in October 2007, her husband was in his car when it was blocked and he was surrounded by bandits who took his cash and valuables. Moreover, [REDACTED] contends that returning to Guyana would mean leaving her parents, two brothers, and other family members, all of whom live in the United States.

The AAO notes that according to the applicant's waiver application, the applicant's mother is a U.S. citizen. Although the applicant has a second qualifying relative in this case, there has been no claim

that the applicant's mother has suffered or will suffer extreme hardship if the applicant's waiver application were denied.

After a careful review of the record, there is insufficient evidence to show that the applicant's wife, [REDACTED] [REDACTED] has suffered or will suffer extreme hardship if her husband's waiver application were denied. If [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding psychological hardship, the record contains a letter from a physician in Guyana documenting the four times he has seen [REDACTED]. According to the letter, [REDACTED] was seen by the physician twice in 2009, once in 2010, and most recently in January 2011. The physician states he has prescribed her several medications, but concludes that her problems cannot be solved by taking pills and recommends she see her family physician in the United States who could refer her to a psychiatrist. Although the AAO is sympathetic to the family's circumstances and recognizes that the input of any health professional is respected and valuable, the record does not show that [REDACTED] hardship, and the symptoms she has experienced, are extreme, atypical, or unique compared to others separated from a spouse. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). The AAO notes that the applicant has never resided in the United States and, thus, the applicant and [REDACTED] have never resided together in the United States during their marriage. In sum, the record does not show that the hardship [REDACTED] will experience if she decides to remain in the United States without her husband has caused or will cause hardship that would be extreme, atypical, or unique compared to other in similar circumstances. Even considering all of these factors cumulatively, there is insufficient evidence showing that the hardship the applicant's wife will experience amounts to extreme hardship.

Furthermore, the record does not show that [REDACTED] would suffer extreme hardship if she returned to Guyana to be with her husband. The record shows that [REDACTED] was born in Guyana. She does not contend that she is unfamiliar with the culture in Guyana or that any physical or mental health problems would make her readjustment to living in Guyana any more difficult than would normally be expected. Regarding her contentions about her son's medical problems, the record contains ample documentation corroborating [REDACTED] claim that the couple's son had a fever and a urinary tract infection when he was six months old while visiting the applicant in Guyana, and was diagnosed with bilateral hydronephrosis and bilateral vesicoureteral reflux for which he underwent surgery in September 2009. However, more recent medical documentation in the record shows that the child has had no further complications since 2009 and his physician is "very pleased with the patient's long-term postoperative outcome." *Letter from [REDACTED]*, dated March 29, 2010; *see also Letter from [REDACTED]* dated July 14, 2011 (discharging the couple's son from Urology's services). Therefore, even assuming medical care in Guyana is not comparable to U.S. standards, there is no suggestion in the record showing that the applicant's son continues to require specialized monitoring or treatment. The record further establishes that the applicant owns a business in Guyana and has been sending money to his wife and children in the U.S. He, therefore, appears to be in a position to support his family financially should they relocate to Guyana to live with him. Although the AAO recognizes the U.S. Department of State recognizes that serious crime continues to be a major problem in Guyana, *U.S. Department of*

State, Country Specific Information, Guyana, dated July 27, 2012, this concern alone is insufficient to show extreme hardship. Even considering all of the evidence cumulatively, including [REDACTED] desire to have her children educated in the United States and the fact that her parents and two brothers now reside in the United States, the record does not show that [REDACTED] hardship would be extreme, or that their situation is unique or atypical compared to others in similar circumstances. *Perez v. INS, supra.*

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, 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.