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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**



H5

DATE: FEB 09 2012 Office: LOS ANGELES, CA

FILE: [REDACTED]

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:

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.

Thank you,


Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Armenia 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 seeking to procure admission to the United States by fraud or willful misrepresentation of a material fact. The applicant's spouse and child are U.S. citizens. She seeks a waiver of inadmissibility in order to reside in the United States with her family.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 30, 2009.

On appeal, counsel asserts that the applicant's spouse and child will suffer extreme hardship. *Form I-290B*, received July 29, 2009.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, and a psychological and psychosocial evaluation of the applicant's child. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant attempted to procure admission to the United States on February 28, 2001 by presenting a lawful permanent resident card under an assumed name. As such, she is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States by willful misrepresentation of a material fact.

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.

Section 212(i) of the Act provides that:

- (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. Hardship to the applicant or her child can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse. 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*, 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 applicant's spouse states that his son would not receive medical treatment and therapy in Armenia; he could not go to Armenia as he would have to work to support the applicant; and life in Armenia is very difficult as the government is corrupt and there are killings every day. *Applicant's Spouse's Statement*, dated September 15, 2008. Counsel states that there is severe political and socio-economic instability in Armenia; the applicant's spouse will have a hard time finding employment; his salary would be insufficient to sustain a decent standard of living; the applicant's child would suffer from inadequate medical care, poor living conditions and substandard special needs education; and the applicant's child's medical condition would be aggravated in Armenia. *Brief in Support of Appeal*, dated August 21, 2009. The record includes a human rights country conditions report on Armenia. The record includes tax returns and W-2 documents reflecting that the applicant's spouse is employed in the United States.

The record reflects that the applicant's child was diagnosed with autistic disorder and mild developmental delays. *Psychological Evaluation*, dated April 29, 2008. The record includes a May 28, 2008 individualized family service plan for the applicant's child reflecting that speech therapy, an Occupational Therapy/Sensory Integration (OT/SI) evaluation and IDP teaching are needed. The applicant's child's June 2, 2008 OT/SI evaluation recommends that he receive occupational therapy and continuation of his current regimen of programs.

The record reflects that the applicant's spouse is a U.S. citizen with employment ties to the United States. In addition, his son was diagnosed with autism and mild developmental delays; and he is receiving various services in the United States. The record includes country conditions information reflecting potential difficulties for the applicant's spouse in Armenia. Based on these issues, and the normal results of relocation, the AAO finds that the applicant's spouse would experience extreme hardship if he relocates to Armenia.

Counsel states that the applicant's spouse's life and joy is his family; the applicant is a loving wife and mother; the applicant takes care of the family and is her spouse's best friend; and the applicant would take their son to Armenia if she has to leave. *Brief in Support of Appeal*. The applicant's spouse makes similar comments as counsel. *Applicant's Spouse's Statement*. He also states that he could not go to Armenia as he would have to work to support her; it would be difficult to work and care for his son; he would have to work less hours to care for his son; he will suffer mentally and psychologically knowing that the applicant and his son would be living in an unsafe country; he

would not want to live anymore without the applicant and his son; and he would become depressed and lose his employment, resulting in the applicant and his son living in poverty. *Id.*

Counsel states that the applicant's son was medically diagnosed as autistic and he will suffer mentally, emotionally, physically and psychologically if the applicant leaves the United States; he would be deprived of the applicant's care and would be estranged from the applicant; and the applicant's spouse would have to pay for a baby sitter. *Brief in Support of Appeal.* The applicant's spouse states that his son receives speech therapy twice a week; he attends a special school; he needs care and attention 24 hours a day; and he is very dependent on the applicant. *Applicant's Spouse's Statement.*

The record reflects that the applicant's spouse would either be separated from his child with autism or he would be raising him without the applicant. As mentioned, the record reflects that the applicant's child is receiving various services for his issues. The record also reflects that the applicant's spouse is close to the applicant. Based on these issues, and the normal results of separation, the AAO finds that the applicant's spouse would experience extreme hardship if he remained in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case include the applicant's misrepresentation and unauthorized period of stay.

The favorable factors include the presence of the applicant's U.S. citizen spouse and child, extreme hardship to her spouse and the lack of a criminal record.

The AAO finds that the violations committed by the applicant cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is approved.