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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



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DATE: JUL 18 2012

Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Applicant: 

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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of Nigeria who submitted false documentation in order to obtain a benefit under the Immigration and Nationality Act (the Act), and was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). She is the spouse of a U.S. citizen and has one U.S. citizen child. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on May 5, 2010.

On appeal, counsel for the applicant articulates the hardships on the applicant's spouse and asserts that they rise to the level of extreme hardship. *Form I-290B*, received June 7, 2010.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) 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 chapter is inadmissible.

The record indicates that the applicant applied for Lawful Permanent Residence (LPR) in 1991, claiming that she had resided in the United States since 1971 and submitting false documentation in furtherance of that misrepresentation. The record shows that the applicant actually entered the United States at New York, New York with a B-2 visa in 1988. As such the applicant willfully misrepresented a material fact in seeking to procure LPR status with Legacy Immigration and Naturalization Service (INS). Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest her inadmissibility on appeal.

The record contains, but is not limited to, the following evidence: a brief from counsel; a statement from the applicant and her spouse; a statement from [REDACTED] dated July 24, 2009, pertaining to the applicant's daughter; a medical findings statement from [REDACTED] of GBMC Healthcare to [REDACTED] dated February 4, 2008, and pertaining to the applicant's daughter; lab reports, background materials and other medical documents related to the applicant's daughter; photographs of the applicant's daughter; a birth certificate for the applicant's daughter; and copies of tax returns filed in relation to a Form I-864 affidavit of support filed on the applicant's behalf. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

- (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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.

On appeal, counsel for the applicant explains that the applicant’s daughter was diagnosed with Klippel Trenaunay Syndrome (KTS) shortly after birth, a congenital circulatory disorder which results in abnormal growths on the skin, abscesses, varicose veins, seizures and developmental impairment, for which she has been receiving specialized medical care. *Attachment, Form I-290B*, received June 7, 2010. Counsel states that the applicant’s daughter experiences seizures, is unable to move about without the assistance of a walker or wheelchair, cannot talk and is scheduled to have multiple surgeries as she ages to cope with the effects of her disease.

The record contains a letter from Dr. [REDACTED] dated July 24, 2009, which corroborates that the applicant’s child has been diagnosed with KTS, suffers seizures which are not yet controllable with medications and that her condition is life-threatening. [REDACTED] asserts that it is medically necessary that the child remain in the United States for treatment. A medical findings report by [REDACTED] also corroborates the severity and impact of KTS on the applicant’s child. The record also contains numerous medical records such as prescription receipts, lab reports and other documents, which corroborate counsel’s assertions.

Although children are not qualifying relatives in this proceeding, hardships to them may be considered if they impact the qualifying relative, in this case the applicant's spouse. The AAO finds the evidence discussed above to be sufficient to demonstrate that the applicant's daughter suffers from a life-threatening disease, must be monitored on a regular basis, and is physically and mentally disabled as a result of her condition. Based on these observations the AAO concludes that the applicant's spouse will experience significant impacts associated with his daughter's condition, both upon relocation and separation.

Counsel asserts that the applicant's spouse will experience extreme hardship upon relocation due to the physical and medical impacts on his disabled daughter. *Attachment, Form I-290B*, received June 7, 2010. As discussed above, the applicant's daughter has a serious medical condition. Disrupting her continuity of care with the doctors and health practitioners that have treated her since birth constitutes a significant hardship, one which would directly impact the applicant's spouse upon relocation. In addition to disrupting the continuity of her medical care, the AAO notes that she requires continuous monitoring and would require immediate medical attention. Based on these observations the AAO finds that the record establishes that the applicant's spouse would experience an uncommon and significant range of physical, emotional and financial impacts arising from relocating his disabled daughter to Nigeria.

Counsel also explains that the applicant's spouse no longer has any family ties to Nigeria, and that due to his age he would be unable to find adequate employment to support his family. He further states that the applicant's spouse would struggle to provide adequate medical care for his daughter due to the conditions in Nigeria and the lack of medical facilities there. The record contains background materials on the applicant's daughter's condition, but does not contain any country conditions materials which corroborates the applicant's spouse's assertions. The AAO will give some consideration to the fact that the applicant's spouse has resided in the United States for a period of time and no longer has any family ties in Nigeria.

When the hardships upon relocation are considered in the aggregate, the AAO finds that the impacts associated with relocating his disabled daughter, his lack of family ties and the other common impacts associated with relocation, would result in extreme hardship to the applicant's spouse.

With regard to hardship upon separation, counsel asserts that the applicant is the primary caretaker for their daughter, and that removal from the United States would leave the applicant's spouse as the sole caretaker of a severely disabled child who is emotionally and physically attached to her mother. *Attachment, Form I-290B*, received June 7, 2010. Counsel further states that the applicant's employment in the United States provides full health care coverage for their daughter, and that without that coverage the applicant's spouse, who works part-time, would not be able to afford health care for his daughter.

As discussed above, the record establishes that the applicant's daughter is disabled. While the record does not contain any evidence that the applicant's spouse would be unable to find full time employment in a position that accords health benefits, it is noted that the existence of his daughter's

condition creates a situation distinct from that of most relatives who remain in the United States and must find employment to support children. The record does establish that the applicant has full time employment and health care coverage through her employment at NMS Healthcare. *NMS Healthcare, Employment Letter*, dated May 25, 2010. The AAO observes that, due to his daughter's condition, the loss of health insurance coverage would result in a significant hardship to the applicant's spouse upon the applicant's removal.

In addition, based on the evidence in the record, the AAO can conclude that having to assume the caretaking responsibilities for a disabled child as a single parent would result in a significant and uncommon physical hardship on the applicant's spouse.

When the hardships upon separation are examined in the aggregate, the AAO finds that they rise above the common impacts to a degree of extreme hardship.

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-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance 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 AAO finds that the unfavorable factors in this case include the applicant's misrepresentation and associated conviction for providing false information under 18 U.S.C. § 1001, her lengthy stay in the

United States without a legal immigration status, and her unauthorized employment. The favorable factors in this case include the presence of the applicant's spouse, the presence of her U.S. citizen daughter, the delicate medical condition of her daughter, the potential for gainful employment of the applicant and the lack of any other criminal incidents during her residence in the United States. Although the applicant's violation of immigration and criminal law is a serious matter, the favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised. The director's decision will be withdrawn and the appeal will be sustained.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *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.