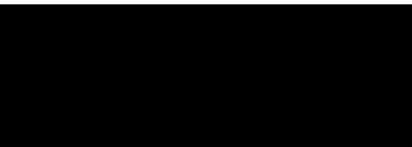


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
U.S. Citizenship
and Immigration
Services



H5



Date: JUL 31 2012 Office: BALTIMORE, MD

FILE:

IN RE: Applicant:

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:

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 District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Colombia 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 the son of a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his mother in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the District Director*, dated April 13, 2010.

On appeal, counsel contends that the applicant established extreme hardship, particularly considering the applicant's mother's severe medical problems.

The record contains, *inter alia*: an affidavit from the applicant's mother, [REDACTED]; letters from [REDACTED] physicians; copies of [REDACTED] medical records; a letter from the applicant's brother; articles addressing country conditions in Colombia; letters from the applicant's employer; copies of tax returns, pay stubs, and other financial documents; a letter from a social worker; and photographs of the applicant and his family. 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 in 1986, he was arrested by immigration officers for entering the United States without inspection. The applicant was scheduled

to appear before an immigration judge, but failed to appear for his hearing. In 1988, the applicant was again arrested by immigration officers and claimed he was a U.S. citizen. 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 mother, [REDACTED] states that she lives with the applicant, his wife, and their two children. According to [REDACTED] her health is very fragile and she cannot live alone because she cannot care for herself. She states she has heart problems and hypertension, is not able to go anywhere without the help of family, and needs her son's assistance. She states she depends on him financially as well as in all aspects of her life.

After a careful review of the entire record, the AAO finds that if [REDACTED] remained in the United States without her son, she would suffer extreme hardship. The record shows that [REDACTED] is currently seventy-eight years old and lives with the applicant and his family. Letters from [REDACTED] physicians confirm that she has numerous physical and mental health problems, including hypertension, chest pain, dizziness, hyperlipidemia, GERD, osteoarthritis, depression, and severe dementia. One physician states that [REDACTED] takes six different prescription medications. The physician states that due to her age and medical problems, [REDACTED] must be supported and monitored on a continuous basis by her immediate family members and cannot be subjected to any drastic changes in her environment. A letter from a social worker also confirms that [REDACTED] has severe functional impairment and needs assistance with daily living activities. According to the social worker, [REDACTED] needs constant supervision to assure her safety as well as assist with her hygiene. Copies of [REDACTED] medical records show she was admitted to the emergency room due to a fall, and more recently, [REDACTED] was seen for decreased visual acuity in her eye and was admitted to the emergency department for uterine prolapse that may require surgery. Moreover, the record contains ample documentation from the applicant's brother showing that he is unable to financially support their mother because he is undergoing foreclosure proceedings due to severe financial problems. Considering these unique circumstances cumulatively, the AAO finds that the hardship [REDACTED] would experience if she remained in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if [REDACTED] returned to Colombia to be with her son, she would experience extreme hardship. As stated above, [REDACTED] has numerous, serious medical and mental health issues and her physician has explicitly stated that she should not be subjected to any drastic change in her environment. The AAO recognizes that relocating to Colombia would disrupt the continuity of her health care and takes administrative notice that the quality of medical care varies greatly outside major cities in Colombia. *U.S. Department of State, Country Specific Information, Colombia*, dated

August 23, 2011. ██████████ would need to readjust to living in Colombia, a difficult situation made even more complicated by her age and her medical and mental health problems. Based on these considerations, the AAO finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that ██████████ faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's entry into the United States without inspection, failing to appear for his immigration hearing, misrepresentation of a material fact to procure an immigration benefit, unlawful presence in the United States, and periods of unauthorized employment. The favorable and mitigating factors in the present case include: family ties to the United States, including his lawful permanent resident mother and brother; the extreme hardship to the applicant's mother if he were refused admission; letters of support in the record from the applicant's employer; the fact the applicant has paid taxes while working in the United States; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when 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.

ORDER: The appeal is sustained.