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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



H5

Date: **JUN 13 2012**

Office: NEWARK, NJ

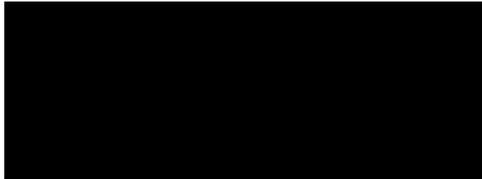
FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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 Rhee  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Newark, New Jersey. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted and the underlying waiver application will be granted.

The record reflects that the applicant is a native and citizen of Ecuador who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for having entered the United States using a fraudulent passport. The applicant is married to a U.S. citizen and is the son of a U.S. citizen father and a lawful permanent resident mother. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife and parents in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated March 2, 2007. The AAO summarily dismissed a subsequent appeal for failing to identify with any specificity any erroneous conclusion of law or statement of fact in the district director's decision. *Decision of the Administrative Appeals Office*, dated September 1, 2009.

Counsel has filed a motion to reopen contending that the applicant established extreme hardship, particularly considering the applicant's parents' health problems and the applicant's [REDACTED]. In support of the motion, counsel has submitted additional evidence, including, but not limited to: a birth certificate of the couple's second child; new declarations from the applicant's mother, father, and wife; letters from physicians; and copies of medical records.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, counsel has submitted additional new documentary evidence to support the applicant's waiver application. The applicant's submission meets the requirements of a motion to reopen. Accordingly, the motion to reopen is granted.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED], indicating they were married on [REDACTED]; two affidavits and a declaration from [REDACTED]; an affidavit and a declaration from the applicant's [REDACTED]; an affidavit and a declaration from the applicant's father, [REDACTED]; a letter from the couple's child's physician and copies of the child's medical records; a letter from [REDACTED] physician and copies of her medical records; a letter from [REDACTED] physician and copies of his medical records; a [REDACTED] assessment; a letter from the applicant's employer; letters from [REDACTED] employer; copies of tax returns, bank statements, and other financial documents; 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 concedes, that in February 1998, the applicant entered the United States by using a photo-substituted Ecuador citizen passport and a U.S. non-immigrant B-2 visitor's visa under the name [REDACTED].” 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). [REDACTED] 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 [REDACTED], states that the applicant is the love of her life and she cannot imagine her life without him. She states that they have a daughter, [REDACTED], who was diagnosed with a [REDACTED] in 2008. According to the applicant’s wife, no complications have arisen, but their daughter needs to be monitored for any problems resulting from the [REDACTED]. [REDACTED] contends she is very worried about her husband’s immigration status, does not sleep well, and that the situation is affecting her mental stability. In addition, she states that she cannot leave the United States to live with her husband in Ecuador because she has lived in the United States her entire life, all of her relatives live in the United States, and she has strong ties in the United States, including strong ties to her students who are young and impressionable. She also contends that Ecuador is dangerous due to violence, gangs, drugs, crime, poverty, and natural disasters.

The applicant’s mother, [REDACTED], states that the applicant is her only son. She states that her son and daughter-in-law live next door and that they are a very close family, depending on each

other for many things, but mostly relying on her son for almost everything. [REDACTED] states she suffers from [REDACTED]. She contends her son takes her to the doctor and, because she does not own a vehicle, she depends on her son for transportation for everywhere she wants to go including doctor's appointments and food shopping. She also contends she does not speak much English so she relies on her son to serve as her interpreter. In addition, [REDACTED] contends her son provides her with financial support. She states she cannot afford to travel to Ecuador to visit him and she cannot travel due to her physical conditions.

The applicant's father, [REDACTED], states that he suffers from [REDACTED]. He states that he relies on his son for everything. He states he does not drive and he does not own a vehicle, so his son takes him everywhere he needs to go. In addition, [REDACTED] states he sees his son every day. He states he is retired and that because his monthly retirement check is only \$585, his son provides him with financial help. Furthermore, he contends his health does not permit him to travel and he may not see his son again if his son was sent back to Ecuador.

After a careful review of the entire record, the AAO finds that if [REDACTED] remained in the United States without her husband, she would suffer extreme hardship. The record contains a birth certificate of the couple's new daughter, [REDACTED], showing that the couple now have two U.S. citizen children who are currently one and five years old. The record also contains documentation from a physician stating that the couple's daughter, [REDACTED] has a [REDACTED], corroborating [REDACTED] claim. In addition, letters from the applicant's parents' physician corroborate the parents' contentions that they have numerous medical problems. Specifically, a letter from [REDACTED] confirms that she has numerous medical conditions including [REDACTED]. A letter from [REDACTED] physician states that he has [REDACTED]. The record further shows that [REDACTED] is currently [REDACTED] old and that [REDACTED] is [REDACTED] years old. The AAO acknowledges their contention that they do not drive and that they are very close with the applicant and his wife, depending on them for many things. In addition, the record contains a letter from [REDACTED] employer stating that she is a group teacher at a learning center and that her annual salary is \$25,000. Moreover, the record contains a [REDACTED] of [REDACTED], diagnosing her with [REDACTED] with Mixed [REDACTED]. Therefore, if [REDACTED] were to remain in the United States without her husband, she would be a working, single parent with two young children and elderly in-laws who have numerous health problems and do not drive. [REDACTED] has already been diagnosed with a [REDACTED] issue and according to the counselor, separation from her husband could be very traumatizing. Considering these unique circumstances cumulatively, the AAO finds that the hardship the applicant's wife 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 the applicant's wife moved to Ecuador to avoid the hardship of separation,

she would experience extreme hardship. The record shows that [REDACTED] was born in [REDACTED], [REDACTED] and has lived her entire life in the United States. [REDACTED] would need to adjust to a life in Ecuador after having lived her entire life in the United States, a difficult situation made more complicated by the fact that she has two young U.S. citizen children, one of whom has a [REDACTED]. Moreover, with respect to her concerns about safety in Ecuador, the AAO takes administrative notice that “[c]rime is a significant concern . . . [and] is a severe problem in Ecuador. Crimes against U.S. citizens in the past year have ranged from petty theft to violent offenses, including armed robbery, home invasion, sexual assault, and several instances of murder and attempted murder. Very low rates of apprehension and conviction of criminals – due to limited police and judicial resources – contribute to Ecuador’s high crime rate.” *U.S. Department of State, Country Specific Information, Ecuador*, dated December 12, 2011 (stating that armed or violent robberies can occur in all parts of Ecuador, not just the major cities). 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 the applicant’s wife 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 misrepresentation of a material fact to procure an immigration benefit and periods of unauthorized presence and employment. The favorable and mitigating factors in the present case include: the applicant’s significant family ties to the United States, including his U.S. citizen wife, two U.S. citizen children, U.S. citizen father, and lawful permanent resident mother; the hardship to the applicant’s wife, children, and parents if he were refused admission; 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.

**ORDER:** The motion will be granted and the underlying waiver application is approved.