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



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DATE: **MAR 12 2012** OFFICE: PANAMA CITY, PANAMA FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Immigration and Nationality Act section 212(i); 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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Panama City, Panama, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Guyana, was found inadmissible under INA § 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or material misrepresentation of a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen spouse. The applicant seeks a waiver of inadmissibility pursuant to INA § 212(i), 8 U.S.C. § 1182(i) based on extreme hardship to her U.S. citizen spouse.

On November 30, 2009, the Field Office Director concluded that the hardship that the applicant's U.S. citizen spouse would suffer did not rise to the level of extreme as required by the statute.

On appeal, counsel for the applicant states that the Field Office Director erred in denying the application for a waiver of inadmissibility. Additional evidence presented on appeal includes a birth certificate for the applicant and her spouse's child and a psychological report regarding the applicant's spouse.

In support of the waiver application, the record includes, but is not limited to, letters from the applicant's attorney, a letter and affidavit from the applicant's U.S. citizen spouse, a birth certificate for the applicant and her spouse's child, a psychological report regarding the applicant's spouse, biographical information for the applicant and her spouse, biographical information for the applicant and her spouse, and documentation of the applicant's immigration history.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under INA § 212(a)(6)(C), which provides, in pertinent part:

- (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.

...

The applicant presented a fraudulent United Kingdom passport to U.S. Customs and Border Protection on September 5, 2004 in an attempt to gain admission to the United States under the visa waiver program. She was referred to secondary inspection and found to be inadmissible under INA § 212(a)(6)(C)(i) for fraud or material misrepresentation and was returned to Guyana on September 6, 2004. The applicant does not challenge her inadmissibility on appeal.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states 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 in this case is the applicant's U.S. citizen 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-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).

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 qualifying relative is the applicant’s U.S. citizen spouse. The statute does not allow for consideration of hardship to the applicant or the applicant’s children, except in the instance that the hardship to them results in hardship to the qualifying relative.

The applicant’s spouse states that he is suffering emotional and physical hardship due to his separation from the applicant. In support of this statement, the applicant submitted a letter from [REDACTED] a psychologist in New York who conducted one interview and examination of the applicant’s spouse on January 20, 2010. [REDACTED] states that the applicant’s spouse “has presented with symptoms of Major Depressive Disorder” and that the applicant’s spouse reported to her that he has frequent feelings of sadness, emptiness, and hopelessness; difficulty sleeping; problems concentrating; low energy; and headaches. Although [REDACTED] states that the applicant’s spouse reported unpredictable outbursts of crying that “make it difficult for him to function” in his role as a flight attendant, she did not prescribe any course of therapy or treatment for the applicant’s spouse. The record does not contain any additional evidence to indicate that the applicant’s spouse has sought medical treatment for a sleep disorder or headaches, nor is there any evidence to support the claim that the applicant’s spouse’s condition has affected his ability to perform his duties at work.

The applicant’s spouse also states that he worries for his wife’s safety in Guyana due to the high incidence of crime there. No evidence, however, has been submitted to document the country

conditions in Guyana or illustrate why the applicant's spouse is at risk there. The applicant has submitted a birth certificate for the child that was born to her and her spouse on July 31, 2010, however, the birth of a child is also not a circumstance that in and of itself illustrates extreme hardship. The AAO recognizes that the applicant's spouse likely experiences hardship due to separation from the applicant and their young child; however, no evidence has been provided to explain that hardship or illustrate why that hardship is extreme. Moreover, the record contains a letter from the applicant's spouse stating that he cares for the applicant's daughter, his stepdaughter, in the United States; however, no evidence has been provided to illustrate that the applicant's daughter does in fact reside in the United States with her spouse. And, there is not evidence in the record regarding the hardship that the applicant's spouse experiences from caring for his stepdaughter - emotional, physical, or financial - without her mother present. The applicant also states that his frequent trips to Guyana cause him to lose time at work, but he has not submitted any documentary evidence of his trips to Guyana or any hardship those trips have caused him in terms of his employment.

The applicant has also not presented any evidence illustrating what hardship her spouse would suffer if he were to relocate to Guyana to reside with the applicant. The applicant's spouse, a native of Guyana, who by his own statement visits that country frequently, states that he worries for his wife's safety in Guyana, but he does not state that he would be at any risk if he were to reside there. Again, there is no evidence in the record concerning the country conditions in Guyana or any evidence to illustrate why the applicant's spouse would suffer extreme hardship if he were to relocate there to reside with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her qualifying relative as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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. 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.