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



715

[REDACTED]

DATE: **MAY 09 2012**

OFFICE: NEWARK, NEW JERSEY

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) and Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

[REDACTED]

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,

Perry Rhew, Chief
Administrative Appeals Office

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

The record reflects that the applicant is a native of Ghana and citizen of Canada 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 having attempted to procure admission to the United States through fraud or misrepresentation. The applicant also was found to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking admission within 10 years of her last departure from the United States. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. The applicant, through counsel, does not contest these findings of inadmissibility. Rather, she seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and (a)(9)(B)(v), in order to reside in the United States with her husband and children.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated July 1, 2009.

On appeal, counsel contends that the applicant has established extreme hardship to her United States citizen spouse and that her wavier application warrants a favorable exercise of discretion. *See Form I-290B, Notice of Appeal or Motion*, dated July 29, 2009.

The record includes, but is not limited to: letters of support; identity, psychological, medical, financial, and employment documents; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides:

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

Section 212(a)(6)(C) of the Act provides 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 Act is inadmissible.

...

(iii) Waiver Authorized.-For provision authorizing waiver of clause (i), see subsection (i).

The Field Office Director found the applicant inadmissible for having sought to procure admission to the United States as a nonimmigrant visitor for pleasure on August 16, 2006, when in reality, the applicant was an intending immigrant who was going to reside in the United States with her then lawful permanent resident spouse.¹ The record supports this finding, and the AAO concurs that this misrepresentation was material. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

In addition, the record reflects that the applicant was admitted to the United States on August 30, 2006, as a B-2 Visitor, valid until September 12, 2006. The applicant did not depart from the United States upon the expiration of her B-2 status. Rather, she jointly filed an Application to Register Permanent Resident or Adjust Status (Form I-485) along with a Petition for Alien Relative (Form I-130) on February 3, 2008. In August 2008, she departed the United States and returned on August 30, 2008, pursuant to Advance Parole; valid until August 29, 2009. The applicant has remained in the United States to date. The applicant accrued unlawful presence from September 13, 2006, until February 3, 2008, when she filed the Form I-485; a period in excess of one year.

In *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012), the Board of Immigration Appeals (BIA) held that an alien who leaves the United States temporarily pursuant to advance parole under section 212(d)(5)(A) of the Act does not make a departure from the United States within the meaning of section 212(a)(9)(B)(i)(II) of the Act. Here, the applicant obtained advance parole under section 212(d)(5)(A) of the Act, temporarily left the United States pursuant to that grant of advance parole, and was paroled into the United States to pursue a pending application for adjustment of status. In accordance with the BIA's decision in *Matter of Arrabally*, the applicant did not make a departure from the United States for the purposes of section 212(a)(9)(B)(i)(II) of

¹ The AAO notes that the applicant also sought admission to the United States as a nonimmigrant visitor on August 19, 2006, but withdrew the request for admission.

the Act. Accordingly, the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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

- (1) The Attorney General [now Secretary of Homeland Security (Secretary)] may, in the discretion of the [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 [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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant or the applicant's 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. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 indicates that her spouse would suffer extreme emotional hardship in her absence because she cares for their children while he works; takes care of the household duties, including cooking, cleaning, shopping for food, household items, and clothing; as well as cares for the spouse’s elderly mother, who is suffering from multiple medical conditions. The applicant’s spouse further indicates that the applicant is his strength and helper; she raises their children; cooks, cleans, and pays the bills; provides strong educational support for the children; and eventually will work so that they can realize their dream of home ownership. The spouse’s mother describes how the applicant assists her with her debilitating muscle condition. Counsel also submitted a psychological evaluation, discussing the reasons why the spouse works two jobs and the applicant serves as the primary caregiver for their children; why the spouse’s income is unable to support two households; how the spouse already is suffering from emotional disturbances such as sleep deprivation, anxiety, stress, and headaches, in anticipation of possible separation from the applicant and children; and how the children would be affected by separation.

The evidence on the record is sufficient to establish that the applicant’s spouse has been evaluated for mental health-related concerns, and because of his symptoms, may experience some hardship in the applicant’s absence from the United States. While the AAO acknowledges the findings made in the spouse’s psychological evaluation, the AAO finds that the record does not establish

that the hardship goes beyond what is normally experienced by family members of inadmissible individuals. Moreover, the record does not include any evidence that the spouse needs ongoing treatment for his mental health-related concerns or that the applicant's presence is necessary in that treatment.

Further, the evidence on the record is insufficient to establish that the spouse's mother suffers from a debilitating muscle condition that requires the applicant's assistance specifically. The record contains a hand-written note concerning the spouse's mother's diagnosis that is illegible and does not contain a clear explanation of the current medical condition of the spouse's mother. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

The record also establishes that the applicant's spouse is the sole wage-earner and has served as a fulltime employee for [REDACTED] since June 5, 2002, earning a salary of \$42,625/annum. However, there is no evidence in the record of the spouse's financial obligations other than a rental agreement. Accordingly, there is not sufficient evidence to establish that the spouse would be unable to meet his financial obligations or to support himself in the applicant's absence and/or afford to pay for childcare coverage while he is at work. Moreover, the record does not include any evidence of employment opportunities or labor conditions in Canada, demonstrating the applicant's inability to contribute to hers and the spouse's households.

The AAO notes the concerns regarding the applicant's spouse's mental health issues and financial obligations along with his mother's medical condition, but finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of separation from the applicant.

Additionally, the applicant indicates that her spouse would suffer extreme emotional and financial hardship upon relocation because he would be separated from his mother, whom he and the applicant provide care and comfort, and lose his source of income. The applicant also indicates that they do not have any relatives in Canada, and may consider relocating to Ghana. The spouse's mental health professional indicates that the spouse believes that he would be unable to find employment in Canada that would generate the same income he currently earns from his two jobs.

Although the record demonstrates that the applicant's spouse has a few family members in the United States and may experience some hardship upon separating from them, the evidence in the record does not indicate that the hardship that the spouse may experience goes beyond what is commonly experienced by qualified relatives of inadmissible family members. Also, the record does not include any country conditions information concerning employment opportunities or economic, political, and social conditions in Canada and/or Ghana, his native country, and how such conditions would impact the spouse.

Although the applicant's spouse may experience some hardships as a result of relocation, the AAO finds that even when these hardships are considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of relocation with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises 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 U.S. citizen spouse 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.