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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**

PUBLIC COPY



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MAY 21 2012

DATE:

OFFICE: OAKLAND PARK

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.

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,

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Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Oakland Park, Florida, 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 and citizen of Brazil 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 procuring or seeking to procure an immigration benefit through fraud or misrepresentation. The applicant is the derivative beneficiary of an Immigrant Petition for Alien Worker (Form I-140) filed on behalf of his wife. The applicant contests the inadmissibility finding, but also seeks a waiver pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his wife, a lawful permanent resident.

The field office director concluded the applicant had failed to establish the existence of a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director*, January 26, 2010.

On appeal, the applicant's counsel contends USCIS erred in finding the applicant lacked a qualifying relative and contests the field office director's conclusion that the applicant was inadmissible for fraud or misrepresentation in seeking to extend his nonimmigrant status. The record on appeal includes, but is not limited to: counsel's brief regarding the waiver request, a Form I-601 and supporting documents, and an Application to Extend/Change Nonimmigrant Status (Form I-539) with supporting evidence. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

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)(1) of the Act provides:

The [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 {...}.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident wife 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.

Counsel for the applicant contends that the field office director mistakenly concluded there was no qualifying relative in this case; he asserts that the applicant's daughter's U.S. citizenship and his wife's then-pending application for permanent residence made them both qualifying relatives. Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship and only included hardship to a spouse who is a U.S. citizen or permanent resident. Only an applicant's U.S. citizen or permanent resident parent or spouse is a qualifying relative for a waiver under section 212(i) of the Act. Although the denial decision was correct when issued due to absence of a qualifying relative, subsequent grant of permanent resident status to the applicant's wife allows consideration on appeal of the merits of the waiver request.¹

The record shows that, after being lawfully admitted on January 13, 2000, the applicant signed under penalty of perjury a Form I-539 filed on July 19, 2000 that misrepresented a material fact: attached to the extension request as proof of intent to depart was a fraudulent reservation for a December 12, 2000 flight to Brazil. Based on this evidence, the applicant was granted extension of his nonimmigrant status. When the return reservation was found to have been fabricated, the INS reopened the matter and denied the extension of stay on November 12, 2003. The applicant states he learned of this development when he attended a December 1, 2009 interview regarding his Application for Permanent Residence or to Adjust Status (Form I-485), contends that his prior counsel made the misrepresentation without the applicant's knowledge, and supports his claim by providing an August 25, 2003 news report about his lawyer's fraudulent acts. The AAO notes the U.S. Department of Homeland Security suspended this lawyer from practice before it, referencing his August 28, 2003 conviction in federal court and May 20, 2004 Florida disbarment.

The AAO notes that, in addition to the applicant's signature certifying the correctness of the Form I-539 extension application "and the evidence submitted with it," the applicant also signed a separate letter request referring to the attached "copy of my reservation" in support of his claimed intention to depart upon expiration of whatever extension was granted. Applicant bears the burden of proving admissibility under INA section 291. In view of documentation showing the applicant's awareness of the contents of the extension request, he has not proven, merely by showing his attorney convicted of fraud in 2003, that he was not complicit in the fraudulent Form I-539 filing.

¹ Immigration records show that USCIS approved the applicant's wife permanent residency on December 30, 2011. Prior to that date, the applicant had no qualifying relative. The AAO's de novo review authority permits us to consider the hardship claims of a wife who is now a qualifying relative.

The applicant's wife contends she will suffer emotional and financial hardship if she remains in the United States while the applicant resides abroad due to his inadmissibility. The record, however, lacks sufficient evidence to establish these claims.

The record contains no supporting documentation concerning the emotional hardship that counsel and the applicant's wife state she will experience if separated from her husband, other than her own claims and those of the applicant. She and her husband contend that fear of his departure has caused her stress, anxiety, and depression, but they provide no support for this claim. Both spouses state that the applicant's daily parenting role includes preparing his daughter's meals, taking her to various appointments, and nurturing. The record contains no substantiation of these activities or proof that the applicant's wife cannot make alternate arrangements. Hardship to persons other than a qualifying relative is relevant only to the extent it represents hardship to a qualifying relative, and the applicant's wife neither claims nor provides evidence that her husband's unavailability for childcare will impose a hardship on her or their child. There is no evidence supporting the qualifying relative's claim that her husband's departure will cause her any specific emotional difficulty or that she would be unable to visit him overseas to ease the pain of loss. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As for the predicted financial hardship, besides general reference to the applicant's income in the waiver request and inclusion of a 2007 joint tax return, there is no evidence he contributed income to the household or how much. We note a 2009 employment letter sets the qualifying relative's annual wage at a level far exceeding the couple's joint income on the prior year tax return. Besides a single 2004 utility bill in the applicant's name, the record contains only a dissolution document regarding the applicant's previous marriage as evidence of debt. No other documentation has been provided showing the applicant's income, expenses, assets, or liabilities. Therefore, the record contains insufficient evidence that, without his physical presence in the United States, his wife will experience financial hardship. Nor has it been established that the applicant will be unable to support himself outside the United States, thereby imposing hardship on his wife.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. The situation of the applicant's wife, if she remains in the United States, is typical of individuals facing separation as a result of removal and does not rise to the level of extreme hardship based on the record. While the applicant's wife may need to make alternate arrangements with respect to childcare, it has not been established that such planning will cause her any hardship. Based on the evidence provided, the applicant has not met his burden of establishing a qualifying relative would suffer hardship beyond the common results of removal or inadmissibility if he is unable to remain here.

As regards establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, the AAO notes that the applicant made no claim that his wife would experience hardship if she were to relocate with him to Brazil. Therefore, the AAO

cannot make a determination of whether the applicant's wife would suffer extreme hardship if she moved to Brazil.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's qualifying relative will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. The AAO therefore finds that the applicant has failed to establish extreme hardship to his wife as required under section 212(i) of the Act.

In proceedings for application for waiver of grounds of inadmissibility, 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. The waiver application is denied.