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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
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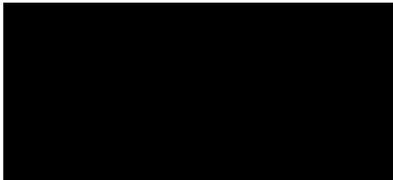
DATE: **MAY 24 2012** Office: LOS ANGELES, CA

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.

Thank you,

Perry B. New
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native of the former Soviet Union and a citizen of Armenia 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 a benefit (asylum) under the Act by fraud or willful misrepresentation of a material fact. The applicant's spouse, two children and parents are U.S. citizens. She seeks a waiver of inadmissibility in order to reside in the United States.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the *Application for Waiver of Grounds of Inadmissibility* (Form I-601) accordingly. *Decision of the Field Office Director*, dated March 19, 2010.

On appeal, counsel asserts that the applicant's qualifying relatives would suffer extreme hardship if the applicant is denied admission to the United States. *Form I-290B*, received April 14, 2010.

The record includes, but is not limited to, counsel's brief; medical letters for the applicant's parents and mother-in-law; statements from the applicant, her spouse and parents; and country conditions information on Armenia. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant misrepresented material information on an asylum application that she filed on January 12, 1998. Although the applicant was granted asylum on August 12, 1998 her asylee status was terminated on October 4, 2007. Based on the record, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring a benefit (asylum) under the Act by fraud or willful misrepresentation of a material fact.

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

- (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.

Section 212(i) of the Act provides 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 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, which in this case are the applicant's spouse and parents. 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*, 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, the AAO considers the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel asserts that relocation to Armenia would result in extreme hardship for the applicant's spouse and parents. He states that Armenia is a third-world country with widespread corruption and poverty, and a per capita GDP six to seven times lower than South Korea, the country mentioned in relevant case law; the applicant's spouse and parents would not be able to obtain necessary medical care in Armenia and they have no family there; and the applicant's spouse's brother is a U.S. citizen residing in the United States.

The applicant's mother states that she has been living in the United States since 1995; she would not be able to receive medical treatment in Armenia since she is a U.S. citizen; she cannot imagine returning to Armenia, as there is so much poverty and joblessness; her two sisters and seven cousins reside in the United States; and she sees her family very often. The physician for the applicant's mother states that she has been under his care for hypertension, headaches, dizziness, depression, anxiety, insomnia, chronic low-back pain, osteoarthritis, peripheral vascular disease, allergic rhinitis, eczema, gastritis and internal hemorrhoids; lists her eight current medications; and that she underwent 15 sessions of combined physical therapy for chronic pain due to degenerative disk disease of the vertebral spine. He also states that her daily activities and functioning are extremely limited due to her medical conditions.

The record contains a U.S. Department of State Country Specific Information on Armenia, dated September 15, 2009, which states that while there are many competent physicians in Armenia, medical care facilities are limited. The report also indicates that elderly travelers and those with existing health problems may be at risk due to inadequate medical facilities.

The record reflects that the applicant's mother has several serious medical conditions; she is 63-years-old; her family ties are to the United States; and she has resided in the United States for 17 years. It also indicates that elderly travelers and those with existing health conditions may be at risk in Armenia due to inadequate health care facilities. When these factors and the hardships normally created by relocation are considered in the aggregate, the AAO finds that the applicant's mother would experience extreme hardship upon relocation to Armenia.

The applicant's mother states that her health deteriorated after working at a convalescent hospital; she suffers from depression and several other medical conditions; she attends a pain clinic where she receives shots to her leg; she suffers from heart palpitations due to her pain medication; and she has great difficulty walking, bathing and getting groceries. The applicant's mother also states that the applicant reminds her to take her medication; comes over to make sure her breathing is stable; assists her with her daily activities; and drives her to the doctor and wherever she needs to go. She further asserts that her spouse is disabled and has medical issues, and that she is incredibly attached to the applicant's children and her interaction with them helps her cope with her depression. The physician for the applicant's mother states that the applicant's presence is necessary for the monitoring of her condition and the prevention of a possible poor outcome.

The record reflects that the applicant's mother has several serious medical conditions that limit her ability to function, her only other child lives at a distance, her spouse has his own medical issues and cannot assist her, and the applicant is her caregiver. When the AAO considers the applicant's mother's multiple medical problems, her dependence on the applicant to assist her with her daily activities and to monitor her health conditions, and the normal hardships created by separation, we find that the applicant's mother would experience extreme hardship upon remaining in the United States.

As the AAO has found extreme hardship to the applicant's mother, it will not make a determination in regard to the hardships claimed by the applicant's spouse and father.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996), the Board stated that once eligibility for a waiver is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion in favor of the waiver. Furthermore, the Board stated that:

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

Id. at 301.

The AAO must then, “[B]alance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant’s misrepresentations, and her stay in the *United States and employment based on a grant of asylum obtained through misrepresentation.*

The favorable factors are the applicant’s U.S. citizen spouse and parents, the extreme hardship to her mother if the waiver application is denied, the hardship to her spouse and father, and the absence of a criminal record.

The AAO finds that the applicant’s violations are serious in nature. Nevertheless, when taken together, we find that the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has met that burden. Accordingly, the appeal will be sustained and the waiver application will be approved.

ORDER: The appeal is sustained. The application is approved.