



**U.S. Citizenship
and Immigration
Services**

HS



DATE: NOV 09 2012 Office: LOS ANGELES, CA

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).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Perry Rhew", with a long horizontal flourish extending to the right.

Perry Rhew
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 and a citizen of Costa Rica 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). She is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) July 19, 2010.

On appeal, the applicant asserts that her spouse has medical conditions and will suffer extreme hardship if she is removed from the United States. *Form I-290B*, received August 22, 2010.

The record contains, but is not limited to, the following documentation: a statement from the applicant; a statement from the applicant's spouse; a copy of a medical appointment notice and a business card for an Orthopaedic Medical Group specializing in Joint Replacement and Sports Medicine; copies of Nursing Discharge Assessments pertaining to the applicant's spouse; medical reports, charts and data related to the applicant's spouse; copies of in-patient reports related to the applicant's spouse; copies of medical exams and findings by medical practitioners in relation to the applicant's spouse; physical therapy progress notes for the applicant's spouse; therapy assessment plans, patient instructions and receipts for medical services; birth certificates for the applicant's daughters; and bank statements, tax returns, school records and pay stubs for the applicant's husband. The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(6)(C) of the Act states, 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 chapter is inadmissible.

The field office director found that the applicant failed to reveal that she was in deportation proceedings when applying for a non-immigrant visa in 1999. The record shows that the applicant failed to depart pursuant to a voluntary departure order issued on January 25, 1995, and that order became a final removal order. The field office director determined that the applicant misrepresented a material fact, to wit, her removal proceedings, at the time she applied for a visa. The field office

director found that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, and the applicant does not contest this finding on appeal.¹

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

- (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 an applicant or her 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. 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.

¹ The AAO also notes that the applicant has been convicted of Petty Theft, a Crime Involving Moral Turpitude. As the applicant is inadmissible due to misrepresentation, the AAO does not find a need to reach a conclusion with regards to inadmissibility under section 212(a)(2)(A) of the Act at this time, and notes that, any waiver granted under section 212(i) would also meet the requirements for waiver of inadmissibility under section 212(a)(2)(A) pursuant to section 212(h) of the Act.

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 explains on appeal that her spouse has medical conditions that require her to physically assist him. *Statement of the Applicant on Appeal*, dated August 17, 2010. She states that he has had surgeries on his knees and will need more treatment in the future, and that in 2007 he had a tumor removed from his stomach.

The applicant's spouse has submitted a statement attesting to the fact that he suffered a work-related injury and has had to have his knee replaced with a plastic joint. *Statement of the Applicant's*

Spouse, dated January 12, 2010. Because of this, he states, he has trouble ambulating and his other knee suffers from the additional physical burden.

The record now contains significant medical evidence to substantiate the applicant's assertions. The volume of medical evidence in the record is probative of the medical burden on the applicant's spouse, and the depth of his crucial community ties to doctors and health care practitioners familiar with his condition. Based on these observations, the AAO finds that the applicant's spouse would experience significant medical and physical hardship upon relocation due to his medical conditions. When these factors are considered in the aggregate with the common hardship impacts of relocation they rise above the usual impacts to a degree of extreme hardship.

With regard to hardship upon separation, the applicant and her spouse have detailed the physical and medical needs of the applicant's spouse in order to demonstrate that the applicant's spouse would experience extreme hardship if she were removed. The AAO finds that much of the evidence submitted with regard to the applicant's spouse's medical conditions is relevant both to relocation and separation impacts, and separation would result in the loss of physical assistance by his spouse to attend doctor's appointments, assist with physical rehabilitation or day to day assistance needed to cope with his conditions. Due to his problems ambulating and the potential for other medical problems to recur based on his medical history, the applicant's spouse would experience an uncommon medical and physical hardship if his spouse were not present to assist him with his day to day needs. When these factors are considered in the aggregate with the common impacts of separation, the AAO finds them to constitute extreme hardship.

As the applicant has established that a qualifying relative will experience extreme hardship upon relocation and separation, the AAO may now move to consider whether the applicant warrants a waiver as a matter of discretion.

In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

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).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance 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 AAO finds that the unfavorable factors in this case include the applicant's misrepresentation, unlawful presence and a conviction for Petty Theft. The favorable factors in this case include the presence of the applicant's spouse, the extreme hardship the applicant's spouse would experience if she were not permitted to remain, as well as the presence of the applicant's three U.S. citizen children. Although the applicant's immigration violations and conviction for Petty Theft are serious matters, the favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised. The field office director's decision will be withdrawn and the appeal will be sustained.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.