

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



415



DATE: OCT 03 2012

Office: PANAMA CITY

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Panama City, Panama, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guyana 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 seeking to procure U.S. admission through fraud or misrepresentation. He is married to a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant does not contest this finding of inadmissibility, and is seeking a waiver of inadmissibility in order to come to the United States and live with his wife.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director*, January 27, 2011.

On appeal, the applicant's counsel contends that USCIS misapplied the legal standard for extreme hardship. In support of the appeal, counsel submits two new statements from the applicant's wife and a medical letter. The record on appeal also includes all documentation submitted regarding the waiver request, as well as evidence of the underlying inadmissibility. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides:

- (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)(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 [...].

In the present case, the record reflects that the applicant married the qualifying relative on April 30, 2004, during a family trip back to Guyana, and that the applicant used a fraudulent Canadian passport on August 17, 2004 to seek U.S. admission as a visitor in transit to Canada. Although claiming to be a dual citizen of Guyana and Canada and saying he was unaware the passport was fraudulent, the applicant could not explain the presence of a date of birth not his own in the passport,

as well as on the customs declaration he completed and signed.<sup>1</sup> The record shows that he was removed on October 13, 2004 to Guyana, where he has since resided.

A waiver of inadmissibility under section 212(i) 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 U.S. citizen 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.

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 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

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\_\_\_\_\_ authorities confirmed that, while the passport was genuine, it had been obtained by fraudulent means, and that the person who issued it at the \_\_\_\_\_ was facing criminal charges in \_\_\_\_\_. There is no evidence on record to support the applicant's contentions that his parents are \_\_\_\_\_ citizens, that they lived for a time in \_\_\_\_\_ that he derived \_\_\_\_\_ citizenship from them, or that he is a \_\_\_\_\_ resident.

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’s wife contends she will suffer emotional and physical hardship if the applicant is unable to reside in the United States. In statements dated February 16 and 23, 2011, she reasserts the stress and depression noted in her September 29, 2009 statement describing hardship caused by the applicant’s immigration problems. The record contains a psychological report diagnosing the qualifying relative with panic disorder, based on self-described symptoms that included tremors, sadness, and difficulty concentrating. Although the report stated that work demands made her unable to obtain treatment for her symptoms, it failed to recommend any such treatment or indicate its anticipated impact on her situation. The record contains no description of her job responsibilities or any problems performing them. The only other hardship evidence consists of an internist’s notation that the qualifying relative was receiving physical therapy for a workplace injury. Neither the injury nor the therapy is specified, there is no indication of any physical limitation on her activity, and the note gives no basis for the doctor’s statement that his patient would benefit from the applicant’s presence. 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 applicant has made no claim that his absence has caused his wife financial hardship. The evidence suggests the applicant has a job in [REDACTED]. As the record contains no evidence of either the applicant’s or his wife’s assets, expenses, or income, there is insufficient evidence of the qualifying relative’s overall financial situation to establish that, without the applicant’s physical presence in the United States, she will experience financial hardship. 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)).

The record does not show that the cumulative effect of the emotional, physical, and financial hardships the applicant's wife is experiencing due to her husband's inadmissibility goes beyond the hardship normally imposed by the separation from a loved one. The AAO thus concludes that, based on the record evidence, were the applicant's wife to remain in the United States without the applicant due to his inadmissibility, she would not suffer extreme hardship.

Regarding relocation, counsel for the applicant asserts that the qualifying relative is unable to return to Guyana and that her life would be endangered by doing so. The record contains no evidence of any logistical, safety, or security concerns, and the applicant's wife reports using every vacation from work as time to visit her husband. She claims that moving back to Guyana would be difficult because she is supporting her mother in the United States. There are no details on record regarding her mother's living situation, no indication of the nature or extent of the help she requires, or any showing that the qualifying relative is the only person able to fulfill this support role. The only information regarding family ties are unsubstantiated references to her mother being in the United States and claims to have no remaining relatives in Guyana besides the applicant. Due to lack of documentation of the qualifying relative's background – education, current job, salary, or work history -- or the employment situation overseas, the AAO is unable to assess her claim to have poor prospects there.

The applicant has provided insufficient evidence of the problems his wife would experience by returning to the country of her birth. He has, therefore, not shown a qualifying relative would suffer extreme hardship were she to relocate abroad to reside with him due to his inadmissibility.

The documentation in the record, when considered in its totality, reflects that the applicant has not established his wife would suffer extreme hardship were the applicant unable to reside in the United States. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation is typical of individuals separated as a result of removal and inadmissibility, and 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 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.