

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**



715

[REDACTED]

Date: **OCT 22 2012**

Office: NEWARK, NJ

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

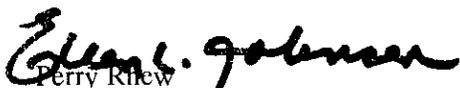
[REDACTED]

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 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 Khew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey. The matter 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 Jamaica who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit, and section 212(a)(9)(A)(i) of the Act as an alien previously removed from the United States. The applicant is married to a U.S. citizen and seeks permission to reenter the United States and a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to her husband and did not warrant a favorable exercise of discretion. The field office director denied the waiver application accordingly.

On appeal, counsel contends that the notario who assisted the applicant in filing her application failed to submit adequate documentation of the applicant's husband's extreme hardship. Counsel contends the applicant's husband will suffer from extreme hardship, particularly considering he has cancer.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating they were married on July 26, 2007; a letter from the applicant; two letters from [REDACTED] letters from [REDACTED] physician; a psychological evaluation of [REDACTED] a letter from [REDACTED] employer; copies of tax records; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

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.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in

extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

Section 212(a)(9)(A) of the Act states, in pertinent part:

Aliens previously removed.-

(A) Certain aliens previously removed.-

(i) Arriving aliens. - Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

* * *

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

In this case, the record shows, and the applicant concedes, that in November 2001, she attempted to enter the United States by presenting a photo-substituted passport. During questioning, the applicant claimed her true name was [REDACTED]. The applicant was placed in expedited removal proceedings, ordered removed, and was removed from the United States the same day. The applicant was prohibited from entering the United States for five years. The record further shows that less than five years later, in November 2005, the applicant entered the United States using a three-month visitor's visa. The record shows that the applicant's visa application stated that her name was [REDACTED] that she had never been refused admission to the United States or been the subject of a deportation hearing, and that she had never been unlawfully present in or deported from the United States. The applicant remained in the United States beyond her authorized stay and continues to live in the United States. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit. The applicant is also inadmissible under section 212(a)(9)(A)(i) of the Act as an alien previously removed from the United States who reentered the United States within five years of her removal without the consent of the Secretary of the Department of Homeland Security.

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.

In this case, the applicant's husband, ██████████ states that he has colon cancer. He contends he had colon cancer surgery and is currently in chemotherapy. According to ██████████, he has experienced a lot of complications from his cancer, including vomiting, drowsiness, tiredness, nausea, dizziness, and constipation. He states he is on a special diet and that his wife cooks all of his special meals for him. In addition, he states that she drives him to his doctor's appointments and to chemotherapy. He also states that she helps him at night, including cleaning his soiled bed and helping him to use the bathroom. He further contends that she is the sole caretaker of their children and does all of the household chores. ██████████ contends he is a helpless man, depends on his wife for everything, and that she is all he has so long as he is alive.

After a careful review of the evidence, the AAO finds that if ██████████ stays in the United States without his wife, he would experience extreme hardship. The record contains ample documentation corroborating ██████████ claim that he has colon cancer. A letter from his physician states that ██████████ was diagnosed with colon cancer when he was thirty-six years old and that given his young age, his cancer may return. The letter confirms that ██████████ underwent surgery and is currently in chemotherapy which the physician describes as quite toxic. According to the physician, the side effects of include nausea, vomiting, diarrhea, and a lowering of blood count to life-threatening levels. The physician states that ██████████ has been experiencing eye irritation and burning, hiccups, fatigue, constipation, and blood count suppression, and that his side effects are debilitating. The physician confirms that ██████████ wife is his primary caregiver and that her assistance gives him the highest chance of being cured from his cancer. The physician describes ██████████ chemotherapy cycle as complicated, including intravenous drugs for three hours in the office, followed by an infusion pump he must wear at home, then more drugs administered in the office, and then going home again with the infusion pump. According to the physician, ██████████ wife is needed to perform extensive care of him and to help manage his treatment. Moreover, a psychological evaluation of ██████████ diagnoses him with Major Depressive Disorder and Generalized Anxiety Disorder. According to the psychologist, if ██████████ wife departed the United States, he would experience severe and significant depression and anxiety. Considering these unique circumstances cumulatively, the AAO finds that the hardship ██████████ would experience if he remained in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if ██████████ relocated to Jamaica to be with his wife, he would experience extreme hardship. As stated above, ██████████ has been diagnosed with cancer and is undergoing chemotherapy. The AAO recognizes that relocating to Jamaica would disrupt the continuity of his health care and takes administrative notice that medical care is more limited in Jamaica than in the United States and that serious medical problems can cost thousands of dollars or more, often requiring cash payment prior to receiving services. *U.S. Department of State, Country Specific Information, Jamaica*, dated November 17, 2011. In addition, the AAO recognizes that ██████████ has lived in the United States since at least 2004 and is from Haiti, a country designated for

temporary protected status. Relocating to Jamaica would involve adjusting to a third country, a difficult situation made even more complicated by his medical problems. Based on these unique considerations, the AAO finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

In that the applicant has established that the bars to his admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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 . . . 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, 21 I&N Dec. 296, 301 (BIA 1996). 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).

In this case, the AAO finds that the applicant does not warrant a favorable exercise of discretion. The adverse factors in the present case include that the applicant is inadmissible on two separate grounds of inadmissibility – *i.e.* misrepresentation and reentering the United States within five years of her removal. Notably, the applicant has misrepresented material facts to an immigration officer three times. The applicant's first misrepresentation occurred when she attempted to enter the United States by presenting a photo-substituted passport in November 2001. The applicant admits to this misrepresentation. Her second misrepresentation occurred when she identified herself as [REDACTED] during questioning regarding her fraudulent passport. The applicant contends that this was not a misrepresentation and submits four letters in support of her contention that she was nicknamed [REDACTED]. The applicant's contention is unpersuasive. Even assuming she was nicknamed [REDACTED],

the record shows her maiden name was [REDACTED] not [REDACTED] as she had attested to in her sworn statement. In addition, she asserted that her birthday was [REDACTED] when the record shows that her birthday is actually [REDACTED]. The applicant's third misrepresentation occurred in 2005 when she misrepresented material facts on her visa application. Thus, the applicant has repeatedly misrepresented material facts over the course of several years and is reluctant to admit her wrongdoing. In addition, the applicant was removed from the United States and reentered the United States *prior to the five years she was deemed inadmissible*. The favorable and mitigating factors in the present case include: the applicant's family ties in the United States, including her U.S. citizen husband and children; the extreme hardship to the applicant's family if she were refused admission; and the applicant's lack of any criminal convictions. The record does not show a history of stable employment, the existence of property or business ties, evidence of value or service in the community, or any letters of support attesting to the applicant's good character.

The AAO finds that, when taken together, the favorable factors in the present case do not outweigh the significant violations of this country's immigration laws such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.¹

ORDER: The appeal is dismissed.

¹ The AAO notes that the Form I-290B Notice of Appeal indicated that it was related to both the applicant's Form I-601 and Form I-212. As there was only one fee paid and one I-290B filed for the two decisions the AAO can only review one of the applications, in this case the I-601, the application with the more stringent requirements. As such, the applicant's Form I-212 also remains denied.