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



115



DATE: **SEP 11 2012**

OFFICE: SANTO DOMINGO, D.R.

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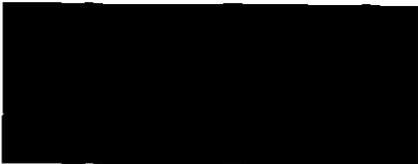
IN RE:

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 with the field office or service center that originally decided your case by filing a 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, Santo Domingo, Dominican Republic and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Trinidad and Tobago who was found to be inadmissible to the United States under 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 a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen father and mother.

The Field Office Director concluded that the applicant 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. See *Decision of the Field Office Director*, dated November 30, 2010.

On appeal counsel contends that the United States Citizenship and Immigration Services (USCIS) did not fully or accurately take into account all factors present that would establish extreme hardship to the applicant's qualifying relative parents. See *Counsel's Appeal Brief*, received January 5, 2011.

The record contains, but is not limited to: Form I-290B and counsel's appeal brief; various immigration applications and petitions; two hardship affidavits from the applicant's father; documents related to the applicant's deportation proceedings; and documents related to the applicant's inadmissibility. The entire record was reviewed and considered in rendering this decision on appeal.

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.

The record shows that the applicant entered the United States on or about May 17, 1989 with a nonimmigrant visitor visa authorizing him to remain until November 15, 1989. The applicant remained in the United States beyond the authorized period and was arrested on May 22, 1996 by immigration authorities. The applicant subsequently departed the United States in 1997. The record shows that during a 1998 interview with a consular officer, it was discovered that the applicant submitted fraudulent documents (including but not limited to a job letter and bank statement), in support of a petition filed by his then [REDACTED]. The record shows that the applicant's father later filed a Form I-130, petition for alien relative on his behalf which was approved on June 17, 2003. The applicant was interviewed again by a consular officer on June 25, 2009, during which he admitted the prior submission of fraudulent documents in order to obtain a visa. On September 17, 2010 the visa was refused and, based upon the foregoing, the

applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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

- (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. In the present case, the applicant's father and mother are the only qualifying relatives. 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-Moralez*, 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.

The record reflects that the applicant’s 71-year-old father and 61-year-old mother are both natives of Trinidad and Tobago and citizens of the United States. The applicant’s father indicates that without his son he and his wife are being deprived of a life in the United States which is causing them extreme and unusual hardship. He states that he cannot imagine himself and his wife spending their golden years of life without the applicant in the United States. The applicant’s father writes that he misses his son, has trouble focusing on life, and the prospect of losing him has made him depressed and sad. He explains that the applicant is alone in Trinidad while his parents, sisters and uncles are all in the United States. He maintains that he feels weak, tired, sometimes angry, frustrated and devastated and just wants his son with him to help his life again and to be a normal family. The applicant’s father indicates that he and his wife worry about the applicant and fear harm or foul play may befall him in Trinidad. The record contains no documentary evidence addressing country conditions in Trinidad or demonstrating any physical, mental, or health-related conditions or limitations experienced by the applicant’s father or mother.

Counsel asserts that social and humane factors must be taken into account such as the applicant's parents' age and longtime marriage, their health issues and the consequences of them growing old and ill without the applicant and the burden on the family in their golden years. As previously noted, the record contains no documentary evidence demonstrating that either the applicant's father or mother are ill or suffering any health-related conditions or limitations. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *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 AAO has considered, along with other factors in the aggregate, the age of the applicant's parents, their close relationship to him, and the years they have been separated from him due to his inadmissibility.

The AAO acknowledges that separation from the applicant has and may continue to cause various difficulties for his U.S. citizen father and mother. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relatives, when considered cumulatively, meet the extreme hardship standard.

The possibility of the applicant's father and/or mother relocating to Trinidad and Tobago has not been addressed in the record and the AAO may not speculate in this regard. Accordingly, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen parents would suffer extreme hardship were they to relocate to Trinidad and Tobago to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges his parents face are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

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.