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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services



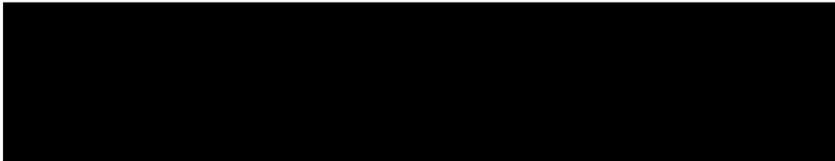
H5

DATE: SEP 12 2012 Office: KENDALL, FL 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 Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Kendall, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Peru 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 attempting to procure admission to the United States by fraud or willful misrepresentation of a material fact. The applicant's spouse is a lawful permanent resident and she seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated July 30, 2010.

On appeal, counsel asserts that the field office director made legal and factual errors in his decision. *Form I-290B*, received August 31, 2010.

The record includes, but is not limited to, counsel's brief, a medical letter, the applicant's statement, her spouse's statement, a psychological evaluation, country conditions information, financial records, medical records and educational records. The entire record was reviewed and considered in rendering a decision on the 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 reflects that the applicant presented a fraudulent Cuban birth certificate with the Form I-485, Application to Register Permanent Residence or Adjust Status, which she filed on February 26, 2006. The applicant claims that a paralegal did some research and told her she was born in Cuba. The AAO finds this claim to lack merit as the applicant made several representations on prior immigration forms that she was born in Peru. As such, she is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States by willful misrepresentation of a material fact.

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 section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bars imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not considered in section 212(i) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (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.

Counsel states that: the applicant's spouse is a native of Cuba and has no family ties to Peru; there is widespread discrimination against women and they are paid less than men in Peru; it is highly unlikely that he could support his children with their college expenses or his family who resides in Cuba; and he has trauma from leaving his family in Cuba.

Counsel states that: the applicant's spouse has two lawful permanent resident children from a prior marriage; the children have never been separated from their father; they are both above the age of 18, but rely financially on their father; the applicant's spouse has a strong relationship with his children; his children's hardship would affect him emotionally and psychologically; he would lose his lawful permanent residence and would be unable to visit his children; it is highly unlikely that his children could visit him as they will lose the financial support of their father; he would likely be unable to find meaningful employment in Peru; country conditions reports reflect that Peru has a prominent level of poverty and lack of enforcement of labor laws; he would be unable to provide financial support to his other children and family in Cuba; he would be unable to afford medical care for the applicant, who has diabetes mellitus, hyperthyroidism and hypertension; and he is worried about his stepson's academic development in Peru due to his difficulty with Spanish. The AAO notes that the applicant's spouse's children are 24 and 21 years old.

The applicant's spouse states that he and his children left Cuba due to the difficult situation there with pain of leaving family but the hope of a better future for him and his children; if he left for Peru everything he did to leave Cuba would have been in vain; there is no work for the applicant, who is in her 40s; and he would have to leave his two children.

The psychologist who evaluated the applicant's spouse states he underwent the trauma of a 12 year process to immigrate to the United States to benefit his children; he had to leave his family in Cuba; and he would re-experience the trauma of leaving family members (his children).

The applicant's spouse's mother states that her son and the applicant financially support her. The applicant's physician states that she suffers from diabetes mellitus, hyperthyroidism and hypertension. A school teacher states that the applicant's son has difficulty with the Spanish language.

The record does not include the requisite supporting documentary evidence for all the claims related to relocation. However, the record reflects that the applicant's spouse does not have ties to Peru, as he is originally from Cuba. He has two young adult children in the United States who he would be separated from permanently. In addition, the AAO notes his plausible claim that he would lose his lawful permanent residence in the United States if he moved to Peru. The AAO notes the psychologist's statement and also the general country conditions information. When the hardship factors and the normal results of relocation are considered in the aggregate, the AAO finds that the applicant's spouse would experience extreme hardship upon relocation to Peru.

Counsel states that: the applicant's spouse would be abandoning the applicant and his 13 year-old stepson if he remained in the United States; his stepson needs his guidance as a father and role model; the applicant makes substantial contributions to the family income; he will be unable to contribute financially to the applicant and his stepson in Peru; and he will have difficulty visiting them.

The applicant's spouse states that the applicant is the most incredible person in his life; she cares for him and his children; he has a good relationship with his stepson and they talk about everyday things; his income is not sufficient to completely support his family; his daughter talks with the applicant about gender-sensitive issues; they are a complete family now; the applicant runs a business which is the family's main source of income; his income is insufficient to support the family; it would be unimaginable to disintegrate their family; it would be unrealistic for him to send the applicant and her son support; and he could not support his household without the applicant. His children detail the active role that the applicant plays in their lives. The record includes numerous bills for the applicant and her spouse. The applicant and her spouse's 2009 tax return reflects a loss of income for the applicant's business.

The applicant's spouse's children detail the many beneficial roles that the applicant plays in their lives. The psychologist who evaluated the applicant's spouse states he underwent the trauma of a 12 year process to immigrate to the United States to benefit his children; he had to leave his family in Cuba; and he would re-experience the trauma of leaving family members (his spouse and stepchild).

The record does not include sufficient evidence to establish that the applicant's spouse would experience financial hardship without the applicant. However, the record reflects that the applicant's spouse would be permanently separated from both his spouse and his step-son, both of whom he is emotionally close to. In addition, he would lose the benefit that the applicant provides to his children. Considering the hardship factors mentioned, and the normal results of separation, the AAO finds that the applicant's spouse would suffer extreme hardship if he remained in the United States.

In *Matter of Mendez-Moralez*, 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 "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 adverse factors in the present case are the applicant's misrepresentation, unauthorized period of stay and unauthorized employment.

The favorable factors are the applicant's lawful permanent resident spouse and stepchildren, extreme hardship to her spouse and the absence of a criminal record.

The AAO finds that the immigration violations committed by the applicant are serious in nature; nevertheless, when taken together, we find 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.