

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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**



H5

DATE: **SEP 21 2012**

OFFICE: HARTFORD, CONNECTICUT

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(j)

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, Hartford, Connecticut and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ecuador 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 remain in the United States with her U.S. citizen father and four minor children born in 1994, 1995, 2001 and 2004.

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 September 30, 2010.

On appeal counsel contends that the evidence previously submitted and that submitted on appeal clearly demonstrates extreme hardship to the applicant's "relatives." See *Form I-290B, Notice of Appeal or Motion*, received October 28, 2010.

The record contains, but is not limited to: Form I-290B; various immigration applications and petitions; a hardship letter from the applicant's father; supporting letters from the applicant's sister and three children; prescription-related information for the applicant's father; medical-related documents for the applicant's children; a mortgage statement and electricity bill; and the applicant's sworn statement and other documents related to her 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 in or about January 1993 by presenting a photo-substituted Ecuadoran passport bearing the name [REDACTED] and containing a B-2 temporary visitor visa. The field office director concluded that because the applicant was unable to provide evidence of her entry using counterfeit identification, it must be assumed that she entered the United States without inspection. The AAO finds no basis in law or fact for the field office director's conclusion. The field office director continues: "USCIS does not find you inadmissible for fraud," but concludes that because the applicant filed an I-601 waiver application based on her claimed entry into the United States on a fraudulent passport, "USCIS will now render a decision..." The AAO finds no basis in law or fact for the field office director's determination of the applicant's inadmissibility or finding that the waiver

application must be adjudicated simply because it was filed. On the Form I-601 waiver application, signed by the applicant on November 21, 2007, it is indicated at page 1, number 10 that she has been declared inadmissible to the United States for: "Photo substituted entry with visa. Fraud waiver. More information to be provided pending FOIA request." In a sworn affidavit, dated September 26, 2008, the applicant indicated that she entered the United States on January 29, 1983 using an Ecuadorian citizenship card registered under the name of "[REDACTED]". During her March 17, 2010 adjustment of status interview, the applicant testified that she entered the United States in January 1993 using a tourist visa in a photo-substituted passport in the name "[REDACTED]". The record contains no documentation that contradicts the applicant's claimed manner of entry. Based on the foregoing, the AAO has determined that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i), for procuring entry to the United States through misrepresentation.

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 and her children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's father is the only qualifying relative. 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 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 father is a 71-year-old native of Ecuador and citizen of the United States. He contends that the applicant is an honest, responsible and hardworking person of good moral character who wants only to live in the United States and make a decent living for herself and her family. The applicant's father states that their family is very united and will be

divided and torn apart if his daughter is taken away. He writes that he will be heartbroken if he is unable to help the applicant with her immigration process and asserts that it is extremely crucial for her to stay in the United States. Further explanation of the crucial nature of the applicant's presence in the United States is not provided. The applicant's father adds that his daughter has sources and opportunities in the United States she will have nowhere else.

The record contains an internet printout titled, "[REDACTED]" from [REDACTED], dated September 30, 2010. The document concerns the applicant's father and indicates that he is to continue taking [REDACTED] Prilosec OTC and Clonazepam, that he is to start taking Acetaminophen-Codeine, and that he is to stop taking Acetaminophen. The conditions for which he is taking any of these medications are not described. A notation on the document indicates that a letter was sent to "Urologist for his findings and indications for Vesicare therapy..." and that the patient "had PT and care with PM&R on 2006; normal LSS XR on 2008." These notations are not explained and no additional medical records from [REDACTED] have been submitted. Nor have medical records been submitted from a urologist or any other physician concerning the applicant's father. The record contains copies of prescriptions for Crestor and Prilosec OTC as well as internet printouts from Drugs.com about Clonazepam, Acetaminophen, Crestor, Enalapril, Solifenacin, Prilosec. The AAO cannot infer or speculate from these concerning the applicant's father's current state of health or medical history. Nowhere in the record have any assertions been made by counsel, the applicant, the applicant's father, or by any physician concerning the applicant's father's health, any medical conditions past or present for which he was or is being treated, whether he has any physical limitations or requires regular treatment of any nature beyond the medications listed, how these medications affect or limit his daily life, or whether the applicant is involved in her father's care.

The applicant's sister, [REDACTED] writes that if the applicant is deported their family will be destroyed and torn apart. She notes that the applicant's four children are young and need their mother with them as they grow into adults. [REDACTED] likewise attests to the applicant's good moral character. Letters have also been submitted by the applicant's children, [REDACTED] expressing love for their mother and the desire that she remain with them in the United States. [REDACTED] writes that his youngest brother, [REDACTED] has asthma. Form letters from a pediatric office have been provided for all four children and indicate the following: [REDACTED] has been a patient since June 2005 and her medical conditions include obstructive sleep apnea, obesity, malocclusion, scoliosis and vitamin deficiency. [REDACTED] has been a patient since December 1995 and his medical conditions include bilateral hydroceles, atopic dermatitis and obesity. [REDACTED] has been a patient since December 2004 and his medical conditions include asthma, speech delay and atopic dermatitis. [REDACTED] has been a patient since August 2001 and his medical conditions include a history of speech delay, obesity, appendectomy in November 2009, and ADHD. [REDACTED] APRN writes in October 2010 that [REDACTED] has been engaged in treatment for about two years including individual therapy, family therapy and medication management services after being referred for problems at school, difficulty reading/concentrating and feeling sad about his struggles academically and socially. [REDACTED] maintains that with her practice's support and services, [REDACTED] has reached his target expectations for his grade level and has been very successful in the community. She adds that the applicant has been very engaged in [REDACTED] treatment as well as the overall wellbeing of her children's academic, social and emotional needs.

While these documents demonstrate that the applicant's children have a number of medical conditions and Jaime a learning disability, the role that the applicant's husband (their father) plays in their care has not been addressed in the record, nor has it been asserted that the applicant's husband, parents, siblings or other family members would be unable to assist in their upbringing in the event of separation. More importantly, as hardship to the applicant and her children can be considered only insofar as it results in hardship to a qualifying relative, nowhere in the record is it articulated or asserted that separation-related hardship to the applicant's children would result in hardship to the applicant's father. The AAO cannot infer and will not speculate from the documents submitted whether separation-related hardship to the applicant's children would be so severe as to constitute extreme hardship to the applicant's qualifying relative father.

While the applicant's mortgage statement and electricity bill have been submitted on appeal, no assertions have been made that the applicant's father would suffer hardship of an economic nature in the applicant's absence. The record contains no documentary evidence detailing the applicant's father's income in relation to his expenses, nor has it been addressed in the record whether the applicant's father derives any financial support from the applicant in the United States that he would lose in the event of her departure to Ecuador.

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

As the possibility of the applicant's father relocating to Ecuador has not been addressed in the record, the AAO cannot speculate in this regard. Accordingly, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen father would suffer extreme hardship were he to relocate to Ecuador to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges her father faces 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.