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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



H5

[Redacted]

Date: SEP 21 2012

Office: NEW YORK

FILE: [Redacted]

IN RE: Applicant: [Redacted]

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:

[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 Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, New York, New York. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

The applicant, a native and citizen of Guyana, 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 having attempted to procure an immigration benefit by fraud and/or willful misrepresentation. Specifically, in October 1993, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), claiming eligibility for an immigrant visa based on marriage to a U.S. citizen. A fraudulent marriage certificate was submitted with the underlying Form I-130, Petition for Alien Relative (Form I-130). Both the Form I-130 and Form I-485 were ultimately denied, in August 1994, for failure to appear at the I-130/I-485 interview. It was later determined that the applicant had never been married to the individual who petitioned for the applicant on the Form I-130, and who was referenced as the applicant's spouse in the Form I-485 application.

The district director concluded that the applicant had 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. *Decision of the District Director*, dated February 22, 2007.

On appeal, the AAO determined that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. Consequently, the appeal was dismissed. *Decision of the AAO*, dated July 30, 2009.

In support of the motion, counsel submits the following: a brief; a psychological evaluation; evidence of the applicant's mother's lawful permanent resident status; an affidavit from the applicant; and documentation pertaining to country conditions in Guyana. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (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) of the Act provides:

- (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 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 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. The applicant's lawful permanent resident spouse and mother are the only qualifying relatives in this case. Hardship to the applicant, children and/or grandchildren can be considered only insofar as it results in hardship to a 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.

On motion, counsel contends that both the applicant’s mother and spouse will experience extreme hardship if they were to remain in the United States while the applicant relocates abroad as a result of her inadmissibility. With respect to the applicant’s mother, the applicant maintains that she is in her early 80s, suffers from severe arthritis, relies on the applicant for care and support and is unable to travel to Guyana to visit her daughter due to her age and physical condition. *Affidavit of* [REDACTED] [REDACTED] No supporting documentation was submitted concerning the applicant’s mother’s medical condition. 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)). As such, it has not been established that the applicant’s mother will experience extreme hardship were her daughter to relocate abroad as a result of her inadmissibility.

As for the applicant’s spouse, counsel submits on motion a psychological evaluation from [REDACTED] [REDACTED] in support of the assertion that the applicant’s spouse will experience extreme hardship were he to remain in the United States while the applicant relocates abroad as a result of her inadmissibility. In the evaluation, [REDACTED] notes that from a psychological point of view, there is no doubt that the applicant’s spouse’s depression and anxiety symptoms will be exacerbated, putting him at risk of developing even more serious health problems, including a significant risk of self-destructive behaviors or suicide. [REDACTED] maintains that the applicant’s spouse is particularly at risk of suicide because he has a history of a suicide ideation and attempt and completed suicide runs in his family, as his daughter and younger brother committed suicide. [REDACTED]

██████████ concludes that the applicant's spouse shows evidence of a Major Depressive Disorder comorbid with an Anxiety Disorder that he developed as a result of the possibility that his wife might be deported from the United States. ██████████ recommends cognitive behavioral interventions, stress reduction interventions, deep muscle relaxation and supportive therapy, pharmacotherapy and close monitoring if the applicant's petition is denied since he is at high-risk for suicide behaviors. ██████████

██████████ The AAO further notes that the applicant and her spouse have been married since 1977, over 35 years. Thus, based on a thorough review of the record, and in particular considering the length of the marriage between the applicant and her spouse and the additional emotional hardship separation brings about, the AAO concludes that were the applicant unable to reside in the United States, the applicant's spouse would suffer extreme hardship were he to remain in the United States.

With respect to relocating abroad based on the denial of the applicant's waiver request, on motion the applicant asserts that her husband would experience extreme hardship. She contends that the living conditions are horrific, where violent crime and poverty are commonplace, and they have no family or property or employment connections in Guyana so they would have no means to support themselves. Further, the applicant contends that her grandchildren are attached to her and her husband and were they to relocate abroad, the grandchildren would suffer immensely. *Supra* at 1. In support, on motion counsel submits the Country Specific Information Report on Guyana from the U.S. Department of State. The AAO notes that said report is general in nature does not establish that the applicant's spouse and/or mother specifically, both natives of Guyana, will experience extreme hardship in their native country. Nor has it been established that the applicant's spouse and/or mother would be unable to return to the United States to visit family members and their community. As such, it has not been established that the applicant's spouse and/or mother would experience extreme hardship were they to relocate to Guyana, their native country, to reside with the applicant due to her inadmissibility.

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 motion to reopen will be granted and the underlying application remains denied.

**ORDER:** The motion to reopen will be granted and the underlying application remains denied.