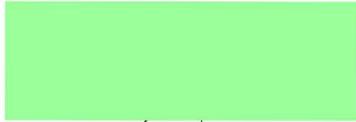


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

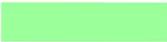


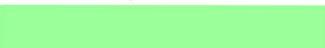
(b)(6)



Date: **APR 04 2013**

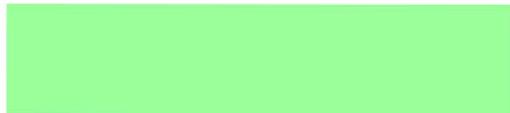
Office: MIAMI, FL

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Honduras who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant was the victim of a deceitful organization and an unscrupulous notario, and that she had no intention to misrepresent anything. Counsel also contends the applicant's husband would suffer extreme hardship if the applicant's waiver application were denied, particularly considering his mental disability.

The record contains, *inter alia*: a declaration from the applicant; a statement from the applicant's husband, Mr. [REDACTED]; a statement from Mr. [REDACTED]'s parents; two psychological evaluations; copies of tax returns and other financial documents; a copy of the U.S. Department of State's Human Rights Report for Honduras and other background information; 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 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

(b)(6)

In this case, the record shows that the applicant filed an application for Temporary Protected Status (TPS) in June 2003, claiming she had entered the United States without inspection in 1998. This TPS application was denied on October 27, 2003. The record further shows that the applicant filed another TPS application in July 2006, also claiming she entered the United States in 1998 without inspection. This second application was denied on June 18, 2008. However, the record shows that the applicant did not enter the United States until March 31, 2001, using a B1/B2 visa. According to the applicant, she did not intend to misrepresent anything in order to obtain TPS status. Regarding the 2003 TPS application, she contends she was given legal advice by a [REDACTED] and that she had trusted his organization, [REDACTED] which she describes as a deceitful, misleading organization. With respect to the 2006 TPS application, the applicant contends she relied on a notario named [REDACTED]. According to the applicant, Ms. [REDACTED] and [REDACTED] induced her to purchase their legal services. The applicant contends that she honestly believed that [REDACTED] and Ms. [REDACTED] knew what they were doing and that she should not be responsible for their actions and misrepresentation of facts.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. See Section 291 of the Act, 8 U.S.C. § 1361 (“Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . .”). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

After a careful review of the record, the AAO finds the applicant has not met her burden of proving she is admissible to the United States. Although the record contains documentation that the applicant filed complaints against both [REDACTED] and [REDACTED] for the unlicensed practice of law, there is insufficient evidence in the record to establish that the applicant was unaware of the incorrect information contained in her TPS applications. The record contains a handwritten letter from the applicant, dated September 22, 2003, filed in response to a Notice of Intent to Deny. The applicant states in this letter that she entered the United States prior to 1999 and that she applied for TPS in 1999, “however the immigration service agency is out of business and left no further contact” information. In support of the application the applicant submitted a letter from a [REDACTED] and copies of monthly rent receipts from 1998 to 2003. The applicant has not acknowledged this letter, does not contend that any immigration services agency or notario assisted her with this letter, and provides no explanation for the evidence she submitted in her attempt to show she was physically present in the United States prior to 1999. The AAO therefore finds that the applicant has not met her burden of proving she is admissible to the United States. Consequently, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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, Mr. [REDACTED] states that he has lived in the United States for nineteen years and that his wife takes care of him.

After a careful review of the entire record, the AAO finds that if the applicant's husband, Mr. [REDACTED] remains in the United States without his wife, he would suffer extreme hardship. The record contains ample documentation showing that Mr. [REDACTED] is mentally challenged, is illiterate, and did not complete the first grade. According to a psychological evaluation in the record, Mr. [REDACTED] has suffered from depression and anxiety since childhood and bites his finger nails, bites his lips, and recently started pulling out his own hair. He reportedly relies on his wife for everything, including preparing his meals, washing his clothes, and cutting his nails, and he acknowledged crying when his wife is at work. The applicant contends her husband has changed a lot in the past year and that he used to be able to take care of himself. In addition, Mr. [REDACTED] stated that his parents are both in their eighties and are unable to care for him. The psychologist diagnosed Mr. [REDACTED] with Anxiety Disorder, Mental Retardation, Major Depressive Disorder, Cognitive Disorder, and Trichotillomania (the recurrent pulling out of one's own hair that results in noticeable hair loss). In addition, the record contains a letter from Mr. [REDACTED]'s parents who are currently eighty and eighty-six years old. According to his parents, they are unable to care for him and they need the applicant to care for him. Considering the unique circumstances of this case, the AAO finds that the hardship the applicant's husband would experience if he remains in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if the applicant's husband relocated to Honduras to be with his wife, he would experience extreme hardship. As stated above, the record shows that Mr. [REDACTED] has several serious mental health issues. The AAO acknowledges that he has lived in the United States for approximately twenty years and that adjusting to living in Honduras would be difficult, particularly considering his mental health problems. Moreover, according to the psychologist, Mr. [REDACTED] would feel lost in another country and does not know if he would survive in Honduras. According to the applicant, he once got on the wrong bus, got lost, and called his wife crying. She eventually found out that he was at the airport. The applicant fears that if Mr. [REDACTED] relocated to Honduras, he would be unable to travel by himself to the United States to see his parents. Furthermore, the AAO acknowledges that the U.S. Department of State has issued a Travel Warning for Honduras. *U.S. Department of State, Travel Warning, Honduras*, dated November 21, 2012. In addition, the U.S. Department of Homeland Security has extended Temporary Protected Status for Honduran nationals through July 2013. Considering all of these factors cumulatively, the AAO finds that the hardship Mr. [REDACTED] would experience if he relocated to Honduras to be with his wife is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's misrepresentation of a material fact to procure an immigration benefit, her unauthorized presence in the United States, and periods of unauthorized employment. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including her U.S. citizen husband; the extreme hardship to the applicant's husband if she were refused admission; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.