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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

Date: APR 05 2013 Office: PANAMA CITY, PANAMA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v), and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i); Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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 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.

Maria Felix
for
Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Guyana 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 seeking to procure admission to the United States through fraud or misrepresentation. On June 27, 2001, the applicant arrived in the United States at [REDACTED] and presented himself as a Transit Without Visa (TWOV) passenger, but later admitted that he had used the TWOV program to gain entry into the United States for the purpose of requesting political asylum. In addition, the applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant applied for asylum in the United States, but his applications for asylum and withholding of removal were denied, and the applicant was ordered removed on November 18, 2002 by an immigration judge. The applicant's appeal to the Board of Immigration Appeals was dismissed on August 30, 2004. The applicant was subsequently removed from the United States on March 15, 2007, and thus accrued unlawful presence in the United States from August 30, 2004 until March 15, 2007, a period of more than one year. The applicant does not contest the findings of inadmissibility, but rather seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), and under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his U.S. citizen wife.

The applicant further seeks permission to reapply for admission after removal pursuant to section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States with his spouse.

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 Ground of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated July 20, 2012. In the same decision, the field office director denied the applicant's Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal.

The record contains the following documentation: a brief filed by the applicant's attorney in support of Form I-290B, Notice of Appeal or Motion; statements from the applicant's spouse, the applicant's mother, and the mother of the applicant's spouse; financial documentation; psychological documentation for the applicant's spouse; and letters of reference. 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:

- (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, in pertinent part:

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....

Section 212(a)(9)(B) of the Act provides, in pertinent part:

Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien...

A waiver of inadmissibility under section 212(i) of the Act and under section 212(a)(9)(B)(v) 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. The applicant's U.S. citizen spouse and the applicant's parents are the only qualifying relatives in this case.¹ Under this provision of the law, children are not deemed to be "qualifying

¹ The record indicates that the applicant's parents are both U.S. citizens residing in the United States. The record includes a statement from the applicant's mother. The applicant's mother states that the applicant's father is very ill and had heart surgery; however, there is no evidence in the record to support the contention that the applicant's father is ill. There is no further indication or evidence in the record that the applicant's parents, as qualifying relatives, would experience extreme hardship if they continue to be separated from the applicant. Thus any hardship to the applicant's father or the applicant's mother will not be considered in this case.

relatives.” However, although children are not qualifying relatives under this statute, USCIS does consider that a child’s hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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-Salcidov. INS*, 138 F.3d 1292, 1293 (9th Cir. 1993), (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 contends that the applicant's spouse has been experiencing severe financial difficulty since the applicant was removed from the United States. The record indicates that the applicant's spouse is employed at a bank and receives an annual salary of \$20,800. The record includes copies of federal income tax returns, indicating an adjusted gross income of \$20,686 for 2011 and \$18,457 for 2010. Counsel contends that due to the limited job opportunities in Guyana, the applicant has difficulty providing any financial support to his family in the United States. However, there is no evidence in the record to support this contention. There is no evidence in the record to conclude that the qualifying spouse is unable to meet her financial obligations in the applicant's absence. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

Counsel further contends that the applicant's spouse is suffering emotional hardship due to her separation from the applicant. The record includes a letter from a psychotherapist which indicates that the applicant's spouse suffers from disturbed sleeping and nagging repetitive thoughts about her future without her husband and how this could negatively impact the children's development. The letter indicates that the applicant's spouse is suffering from depressive anxieties. However, the record contains no further detail about the applicant's spouse's condition and any treatment that may be required. The evidence on the record is insufficient to conclude that the emotional problems that the applicant's spouse is experiencing are resulting in hardship beyond the common results of removal or inadmissibility.

The letter from the therapist further states that the applicant's spouse is suffering emotionally from having to raise two children without their father being present. As noted above, children are not deemed to be qualifying relatives under sections 212(a)(9)(B)(v) and 212(i) of the Act, but USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. The applicant's spouse states that she feels fearful and depressed thinking about her two children growing up without their father. According to the letter from the therapist, the children are very well behaved, loving, and healthy. A letter from the program director at the school that the applicant's daughter attends indicates that the applicant's daughter is doing very well in school. The evidence on the record does not establish that the applicant's children are experiencing any difficulties that would result in hardship beyond the common results of removal or inadmissibility for the applicant's spouse, the only qualifying relative in this case.

The applicant's spouse further states that she is experiencing hardship holding down a full-time job and caring for her children, requiring her to find someone to pick the children up from daycare and

preschool at the end of the day, and watch over them until she returns from work. The applicant's spouse states that she formerly worked as an assistant manager at the bank, but that she was forced to take a demotion as she was unable to perform her job to the best of her ability, due to stress and fatigue from working full time and raising the children without the applicant. However, there is no evidence in the record to support the contention that the applicant's spouse was forced to take a demotion. 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)).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

In regard to relocation, the AAO notes that the applicant's spouse was born in Guyana and resided in there until 2004, and thus is familiar with the language and customs of that country. The applicant's spouse contends that she and her children would suffer medical and health hardships if they were to relocate to Guyana; however, there is no indication in the record that the applicant's spouse or children have a significant medical condition. It has not been established that the applicant is unable to support his family were they to relocate to Guyana. When the hardship factors discussed above are weighed in the aggregate, the AAO does not find them to rise above the hardships commonly experienced upon relocation to a degree of extreme hardship.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval rests with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden. Accordingly, the appeal will be dismissed.

The AAO notes that the field office director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act no purpose would be served in granting the applicant's Form I-212.

ORDER: The appeal is dismissed. The waiver application is denied.