

(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave. N.W. MS 2090  
Washington, D.C. 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: APR 05 2013 OFFICE: SAN SALVADOR (PANAMA CITY)

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)

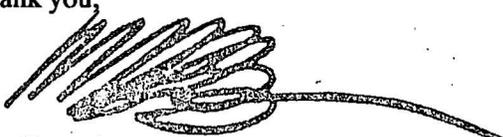
ON BEHALF OF APPLICANT:

**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.

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,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Panama City, Panama, and 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 having attempted to procure admission to the United States through willful misrepresentation. The applicant is the son of U.S. citizens and is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his father. The applicant, through counsel, does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his parents in the United States.

The Field Office Director concluded the applicant failed to establish extreme hardship to 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 25, 2012.

On appeal, counsel asserts the U.S. Citizenship and Immigration Services (USCIS) failed to give sufficient weight to the evidence of extreme hardship the applicant's parents have been experiencing because of the applicant's inadmissibility. Accordingly, counsel asserts USCIS should reverse its decision, approve the waiver application, and return the applicant's file so that an immigrant visa may be issued to him. *See Form I-290B, Notice of Appeal or Motion*, dated October 19, 2012.

The record includes, but is not limited to: counsel's statement submitted in support of the applicant's appeal; letters of support; identity, divorce, psychological, and medical documents; and documents on conditions in Guyana. 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) 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.

...

(iii) Waiver Authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The Field Office Director found the applicant inadmissible for having failed to reveal during his consular interview his true marital status upon seeking an immigrant visa in 1997. The record reflects the applicant was married although he was seeking a visa as the unmarried child of a lawful permanent resident. The record supports the finding, and the AAO concurs the

misrepresentation was material. The AAO finds the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides, in relevant part:

- (1) The Attorney General [now Secretary of Homeland Security (Secretary)] may, in the discretion of the [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 [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(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen parents are the only demonstrated qualifying relatives in this case. 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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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 BIA 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 (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., *In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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 v. I.N.S.*, 138 F.3d 1292, 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 contends the applicant’s parents would suffer extreme medical and emotional hardship in the applicant’s absence as they are suffering from life-threatening medical ailments and mental trauma that would be alleviated by his immigration to the United States, and they are experiencing sadness, anxiety, and possible depression that may be associated with separation from him. The applicant’s father also discusses his medical, emotional, and financial hardship: he loves the applicant very much and has been worried about him since he left him in the care of the applicant’s grandparents when he was nine years old; he already had high blood pressure, but he developed a high blood sugar level because of stress and worry; he is having sleepless nights, thinking about leaving the applicant at such a tender age; there is no one to take care of the applicant since the passing of his grandparents; he and his wife are unemployed and reside by themselves, and the applicant would provide them companionship and security; and he has been receiving a Social Security Pension benefit since February 1, 2012. The applicant’s mother further discusses: she used to visit the applicant, however, her illnesses do not allow her to sit for six – seven hours, she has pain in her legs, and she is taking various medications; she often has to undergo painful blood work; and although the applicant is an adult, he is still her “baby” and she loves and misses him very much.

Although the applicant's parents may be experiencing hardship in the applicant's absence, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals.

The record is sufficient to establish the applicant's father has been a patient at [REDACTED] medical office since February 4, 2006, and he has been diagnosed with hypertension, hyperlipidemia, and noninsulin dependent diabetes. *See Medical Letter Issued by [REDACTED]*, dated September 26, 2012. However, the AAO notes [REDACTED] letter does not include any discussion of any ongoing treatment or any indication the applicant's presence would be advantageous in such treatment. Additionally, the AAO notes [REDACTED] handwritten letter includes another diagnosis. However, the specific diagnosis is illegible and indiscernible. Absent an explanation in plain language from the treating physician of the nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

The record also is sufficient to establish the applicant's mother is being treated by [REDACTED] for uncontrolled diabetes, hypertension, hypothyroidism, and hyperlipidemia. *See Medical Letters Issued by [REDACTED]* dated March 23, 2012 and September 26, 2012. However, the AAO notes [REDACTED] letters do not contain a specific discussion concerning the applicant's role in assisting with the ongoing treatment of her medical conditions other than the general reference that the applicant could "bridge [the] gap in her treatment in terms of caring for her and bringing her levels of stress and anxiety down." *Medical Letter Issued by [REDACTED]* dated September 26, 2012.

Additionally, the AAO notes [REDACTED] diagnosed the applicant's father with Mood Disorder with Major Depressive-Like Episode Due to Medical Illnesses because of his diabetes and hypertension as well as with Moderate Depression. *See Psychological Evaluation of [REDACTED]* dated October 3, 2012. The AAO notes [REDACTED] evaluation indicates the applicant's father's "diabetes has been out of control and unresponsive to pharmacological and life[style] intervention." *Id.* However, the basis for [REDACTED] knowledge of the applicant's father's level of severity of diabetes is unclear as his treating medical physician has only indicated a diagnosis of noninsulin dependent diabetes. Accordingly, the AAO gives little weight to the discussion of the applicant's father's diagnosis of Major Depressive-Like Episode Due to Medical Illnesses contained in the psychological evaluation. Moreover, the AAO notes [REDACTED] evaluation does not include a sufficient discussion of the evaluative methods for making her diagnoses, and it does not include any discussion of any ongoing treatment. Absent a supported explanation in plain language from the treating mental health professional of the nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a mental health condition or the treatment needed.

Further, the AAO notes [REDACTED] diagnosed the applicant's mother with Major Depressive-Like Episode Due to Medical Illness because of her diabetes and hypertension as well as with Major

Depression. See *Psychological Evaluation of* [REDACTED], dated October 3, 2012. The AAO notes [REDACTED] evaluation indicates the applicant's mother "has developed diabetes and hypertension, both of which have been unresponsive to treatment." *Id.* However, the basis for [REDACTED] knowledge of the applicant's mother's reaction to her treatment for hypertension is unclear as her treating medical physician has only indicated she has uncontrolled diabetes and a general diagnosis of hypertension. Accordingly, the AAO gives little weight to the discussion of the applicant's mother's diagnosis of Major Depressive-Like Episode Due to Medical Illnesses contained in the psychological evaluation. Moreover, the AAO notes [REDACTED] evaluation does not include a sufficient discussion of the evaluative methods for making her diagnoses, and it does not include any discussion of any ongoing treatment. Accordingly, the AAO is not in the position to reach conclusions concerning the severity of any mental health conditions or the treatment needed.

The AAO notes the record is unclear concerning the applicant's mother's employment status as the applicant's father indicates he and the applicant's mother are unemployed. See *Letter Issued by* [REDACTED] dated March 23, 2012. However, in her evaluation of the applicant's mother, [REDACTED] states, "[s]he has been working as a child care [sic] provider since she came to the United States. However, the recent onset of severe medical problems is making it difficult for her to continue." See *Psychological Evaluation of* [REDACTED] *supra*. Moreover, the AAO notes the record does not include any evidence of the applicant's parents' income or financial obligations and their inability to meet those obligations in the applicant's absence. And, the record does not include specific evidence of labor or market conditions in the construction industry in Guyana and the applicant's inability to contribute to his and his parents' households. Accordingly, the AAO cannot conclude the record establishes the applicant's parents' financial hardship would go beyond the normal consequences of inadmissibility.

The AAO notes the concerns regarding the applicant's parents' hardship, but finds even when this hardship is considered in the aggregate, the record fails to establish they would suffer extreme hardship as a result of separation from the applicant.

Counsel contends the applicant's parents would suffer extreme hardship upon relocating to Guyana to be with the applicant as there are real dangers to Guyanese-Americans who return, and their lives would be threatened. The applicant's father also indicates: he has been living in the United States since 1986 and his brothers and sisters are living here as well; Guyana does not have proper healthcare; and there is a high rate of crime in Guyana.

The record is sufficient to establish the applicant's parents would suffer hardship if they were to relocate to Guyana. The record reflects they have continuously resided in the United States since about March 1996, where they continue to receive medical treatment. And, although the record does not include specific evidence of their family ties in the United States, the U.S. Department of State's current travel advisory for Guyana states: "Serious crime, including murder and armed robbery, continues to be a major problem. The murder rate in Guyana is three times higher than the murder rate in the United States. Armed robberies continue to occur intermittently, especially

in major business and shopping districts ... Medical care in Guyana does not meet U.S. standards. Care is available for minor medical conditions, although quality is very inconsistent. Emergency care and hospitalization for major medical illnesses or surgery are very limited, due to a lack of appropriately trained specialists, below standard in-hospital care, and poor sanitation. There are very few ambulances in Guyana.” *Travel Advisory, Guyana*, issued July 27, 2012. The AAO finds, in the aggregate, the applicant’s parents would suffer extreme hardship upon relocation to Guyana.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. In re Pilch*, 21 I&N Dec. at 632-33. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relatives, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds the applicant has failed to establish extreme hardship to his U.S. citizen parents as required under section 212(i) of the Act. 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.