



**U.S. Citizenship
and Immigration
Services**

(b)(6)

[Redacted]

Date: **FEB 14 2013**

Office: MIAMI, FL

FILE: [Redacted]

IN RE: Applicant: [Redacted]

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:

[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.

Thank you,

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 the daughter of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her mother and children 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 established extreme hardship, particularly considering her mother's age, medical problems, country conditions in Honduras, and the fact that the applicant has lived with her mother since 2003.

The record contains, *inter alia*: a statement from the applicant's mother, [REDACTED] doctor's notes for [REDACTED] letters from the applicant's son's physicians; copies of the applicant's son's report cards; a copy of the U.S. Department of State's Country Specific Information 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

In this case, the record shows, and the applicant does not contest, that she attempted to enter the United States in February 1993 by presenting an altered Honduran passport. Therefore, 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 mother, [REDACTED], states she has lived with her daughter since 2003. She states her daughter provides her with financial support, shelter, food, and cares for all her needs and that if her daughter's waiver application were denied, she would lose all of this support. According to [REDACTED] she provides child care for her daughter's two children, [REDACTED] and [REDACTED]. [REDACTED] states she cooks all the family's meals, cleans the house daily, and cares for the children until her daughter returns from work. According to [REDACTED], [REDACTED] is sixteen years old and has been diagnosed with anxiety, fears, phobias, and depression for which he sees a psychologist. She contends that if her daughter's waiver application were denied, she would be placed in the situation of caring for [REDACTED] without her daughter's support. In addition, she states she has arthritis of her right knee, bilateral cataracts, osteoarthritis, and borderline hypertension. Furthermore, [REDACTED] states that if she returned to Honduras to be with her daughter, she would have no choice but to live with her son, [REDACTED] in a three-room structure which is occupied by his wife and their two children. According to [REDACTED], [REDACTED] is severely underemployed and cannot support her. She also contends she would not have adequate medical care for her medical conditions in Honduras. She states that the presence of diseases and pollution in Honduras would exacerbate her current medical problems and that she could be the victim of crime as Honduras has uncontrolled, rampant crime.

After a careful review of the entire record, the AAO finds that if the applicant's mother, [REDACTED] remains in the United States without her daughter, she would suffer extreme hardship. The record contains documentation from her physicians corroborating [REDACTED] claim that she has borderline hypertension, cataracts bilaterally, osteoarthritis, and problems with her right knee to the extent that she requires continued treatment and was ordered complete rest with daily assistance for thirty days. The AAO also acknowledges [REDACTED] contention that her daughter provides her with food, shelter, financial support, and takes care of her. In addition, the AAO notes that [REDACTED] is currently sixty-seven years old and has been living with her daughter for the past ten years. Considering these unique circumstances cumulatively, the AAO finds that the hardship the applicant's mother would experience if she remains in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if the applicant's mother returned to Honduras to be with her daughter, she would experience extreme hardship. As stated above, the record shows that [REDACTED] has several medical problems for which she continues to require treatment. The AAO recognizes that returning to Honduras would disrupt the continuity of her health care. Moreover, the AAO acknowledges that [REDACTED] has lived in the United States since approximately 1998, and that readjusting to living in

Honduras would be difficult, particularly considering her advanced age and medical problems. Moreover, with respect to [REDACTED] concern about crime in Honduras, 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. Furthermore, 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 [REDACTED] would experience if she returned to Honduras to be with her daughter 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 and periods of unauthorized employment. The favorable and mitigating factors in the present case include: the applicant's significant family ties to the United States, including her lawful permanent resident mother, lawful permanent resident brother, and two U.S. citizen children; the extreme hardship to the applicant's entire family if she were refused admission; a letter from the applicant's son's physician describing her as a responsible and caring parent; 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.