



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

DATE: JAN 02 2013 OFFICE: PANAMA CITY [REDACTED]

IN RE: [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.

Thank you,

Perry Rhew
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 sustained.

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 attempting to procure entry to the United States by fraud or willful misrepresentation. The applicant is a beneficiary of an approved Petition for Alien Relative who seeks a waiver of inadmissibility in order to reside in the United States with her mother and father.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative. The Field Office Director denied the application accordingly. *See Decision of the Field Office Director*, dated July 28, 2011.

On appeal, counsel for the applicant asserts that the applicant's father should not be working because of multiple medical issues and would suffer extreme hardship if the applicant's waiver application were denied.

In support of the waiver application and appeal, the applicant submitted letters from her father, psychological evaluations of her father, and medical documentation concerning her father. 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:

- (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...

The applicant attempted to enter the United States on August 6, 2003 pursuant to an altered non-immigrant visa. The applicant admitted to purchasing the altered visa after being denied a visa at

a U.S. consulate. Accordingly, the applicant 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 attempting to procure entry to the United States by fraud or willful misrepresentation. The applicant does not dispute the applicability of this ground of inadmissibility on appeal.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not considered in section 212(i) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's parents. 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 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

(b)(6)

“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.

The record reflects that the applicant is a 39 year-old native and citizen of Guyana. The applicant's father is a 62 year-old native of Guyana and citizen of the United States. The applicant is currently residing in Guyana and her father is residing in [REDACTED] New York.

Counsel for the applicant asserts that the applicant's father needs the applicant in the United States because he has recently endured open heart surgery. Counsel further contends that the applicant's father is also suffering emotional hardship due to separation from the applicant, which negatively impacts his physical state. The record contains a letter from the applicant's father's physician stating that he is caring for the applicant's father following cardiothoracic open heart surgery on March 4, 2011 and that the applicant's father also has a history of hypertension and hyperlipidemia. The applicant's father's physician notes that it is medically necessary for the applicant's father to avoid stressful situations that may worsen his condition. The record also contains a psychological evaluation of the applicant's father stating that he is suffering from major depression, generalized anxiety disorder, and post-traumatic stress disorder. The psychologist states that the applicant's father is experiencing a severe mental disorder and further professional inpatient care should be undertaken as soon as possible. The psychologist asserts that his concerns regarding the applicant's father prompted him to intervene and ensure that the applicant's father began a course of mental health treatment. The psychologist further states that the applicant's father should not be denied the assistance of the applicant if she is willing to provide supervision of his care that would be crucial to his ongoing recovery. The applicant's father submitted a letter asserting that he is unable to deal with the prospect of the applicant not being admitted to the United States and that he considers her to be the only hope for himself and his spouse. The applicant's father asserts that the applicant committed to take

care of him in his declining years and that his other daughter is too busy with her family to take on this responsibility. The applicant's father also contends that he is currently enrolled in regular counseling and would be devastated without the financial, physical, and emotional assistance of the applicant. In the aggregate, there is sufficient evidence in the record to find that the applicant's father is suffering from a level of hardship beyond the common results of separation from a daughter.

Counsel for the applicant asserts that the applicant's father cannot relocate to Guyana to reside with the applicant because he has no other family members in Guyana, suffers from multiple medical issues, and is unable to work. The applicant's father's medical ailments, including a recent open heart surgery, are well documented. The letter from the applicant's father's physician states that the applicant's father is required to comply with numerous doctor appointments and the record indicates that the applicant's father is attending counseling sessions. A letter from another of the applicant's father's physicians indicates that the applicant's father has been a patient with his office since July 2010, has regular visits, and is on medication because of his heart surgery and diabetes. It is noted that the continuity of the applicant's father's medical and psychological care in the United States would be disrupted if he relocated to Guyana. It is also noted that the Department of State's Country Specific Information for Guyana indicates that 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. It is also noted that the applicant's father is concerned about his safety upon relocation to Guyana. In this case, the record contains sufficient evidence to show that the hardships faced by the applicant's father, in the aggregate, would rise to the level of extreme hardship if he relocated to Guyana.

Considered in the aggregate, the applicant has established that her father would face extreme hardship if her waiver request is denied. Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on her behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin*, *supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion.

Id. However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives). . . .

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors include the extreme hardship the applicant's father would experience whether he remained in the United States, separated from the applicant, or accompanied the applicant in Guyana, as well as hardship to the applicant's U.S. citizen and lawful permanent resident relatives, and the applicant's apparent lack of a criminal record. The unfavorable factors

(b)(6)

in this matter include the applicant's misrepresentation in order to gain entry to the United States and her subsequent unlawful stay.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors such that a favorable exercise of discretion is warranted. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is approved.