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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: JAN 10 2013

OFFICE: BLOOMINGTON, MN

FILE: [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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg

Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Ethiopia who was found to be inadmissible to the United States under 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 fraud or misrepresentation. The applicant is the daughter of a U.S. citizen and is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen mother.

The 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 Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Field Office Director*, dated September 9, 2011.

On appeal, counsel contends that the applicant is not inadmissible and has submitted sufficient evidence to establish extreme hardship to the applicant's qualifying relative. See *Form I-290B, Notice of Appeal or Motion* (Form I-290B), received October 6, 2011.

The record contains, but is not limited to: Form I-290B and counsel's brief; Form I-601 and counsel's brief; Forms I-130, Forms I-485, Application to Register Permanent Residence or Adjust Status (Form I-485); statements from the applicant, her mother, family and friends; medical records; financial documentation; travel information; country-condition reports; real-estate documents; vehicle registration information; insurance documents; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States with a V-2 visa as a child of a legal permanent resident on August 20, 2002. The applicant changed her legal status to that of nonimmigrant student to remain for duration of status. She received an approved petition for alien relative (Form I-130) as the unmarried daughter of a U.S. citizen on June 29, 2007. The applicant then married a U.S. citizen and applied to become a lawful permanent resident. The Field Office Director found that she had entered into a marriage for the purpose of evading the immigration laws and issued a Notice of Intent to Deny (NOID) the Form I-130 on September 16, 2009. A rebuttal was not submitted, and the Form I-130 was denied on October 21, 2009. The applicant was placed into proceedings and was granted a motion to dismiss proceedings to pursue adjustment of status. The applicant had filed Form I-485 to adjust her status to that of lawful permanent resident on November 2, 2009, based on the Form I-130 filed by her mother. The applicant was asked to file Form I-601 for a waiver of her inadmissibility under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i), for entering into a fraudulent marriage with a U.S. citizen to procure an immigration benefit. The applicant contested her inadmissibility when she filed the Form I-601 and contests the inadmissibility on 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.

In her appeal, the applicant maintains that the immigration officers at the site visit failed to take into account her statements and the items in various rooms that reflect her difficult marital living situation. She states that the ownership of the house and vehicle as noted in the NOID was incorrectly analyzed; her former husband solely owns the house. A quit-claim deed from her former husband's former girlfriend was provided as evidence. Counsel also asserts that removing the ex-girlfriend from a joint car loan between her and the applicant's former husband was not financially sound. Car registration documents from 2010 show that the applicant's former husband and girlfriend have a car in both their names registered at the same address.

Although the applicant provided explanations to address her inadmissibility, the record reflects the applicant fraudulently or willfully made a material misrepresentation to a U.S. immigration officer to procure the immigration benefit of lawful permanent residence by marriage to a U.S. citizen. The record contains the findings of the July 7, 2009 site visit. The applicant was not forthcoming about her former husband's former girlfriend and child living at the residence. According to the site visit report, the applicant told the immigration officers that her husband's former girlfriend was a friend who did not live in the house. Her husband's daughter was also hidden out of sight of the officers. The site visit illustrates the applicant's material misrepresentation to U.S. immigration officers in order to benefit from permanent residency through marriage to a U.S. citizen. As such, the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i).

Section 212(i) of the Act provides:

- (1) The [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, which includes the United States citizen or lawful permanent 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. In the present case, the applicant's mother is the only qualifying relative. 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-Salcido v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 applicant's 62-year-old mother is a native of Ethiopia and citizen of the United States. She indicates that she has numerous chronic health problems. She also was diagnosed with a pelvic infection and hospitalized for two weeks in July 2011. A letter from [REDACTED] from 2011 indicates that she is improving with medication but is still weak, and the applicant's services are critical for her mother's care. Another letter from [REDACTED] and letters from [REDACTED] state she "has an extensive medical illness," ongoing back pain, "unusual malnutrition and anemia," abdominal/pelvic cellulitis, and has needed continued care from the applicant. [REDACTED] states that the applicant's mother's pain and fatigue make it difficult for her to work. The applicant's mother maintains that she experienced increased problems with her back and neck, and as a result her work hours as a registered nurse's assistant were reduced in 2010. Car accidents in 2006 and 2008 caused the applicant's mother multilevel degenerative disc disease, as mentioned in the medical reports submitted. The applicant lives with her mother and sister and pays for her mother's medications and expenses, as evidenced by prescription receipts and bank records. The applicant's mother indicates that she is dependent on the applicant financially. Although her other daughter [REDACTED] also lives with them, [REDACTED] income is not sufficient to support their mother. The applicant's mother also relies on the applicant for her physical care due to applicant's training as a registered nurse. She maintains that the applicant also does the housework because of her pain. She speculates that when she feels healthier, she would like to train to be a registered nurse but could only do so with the applicant's financial and emotional support.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's mother, including physical difficulties, emotional strain, the financial responsibilities of maintaining their household, and her needed daily assistance especially with her training as a registered nurse. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen mother would suffer extreme hardship due to separation from the applicant.

The applicant's mother declares that she cannot relocate to Ethiopia. She indicates that she would not tolerate the lower standard of medical care in Ethiopia and does not trust the health care system there. She states that she has a personal relationship with her physician in the United States, and because he knows her medical history, he is able to provide her with efficient medical care. She claims she has "no one back home" in Ethiopia, but also stated in her affidavit from 2010 that her mother and step-daughter live there. She indicates that at least four of her children

are in the United States. Statements, medical records, and travel documentation shows that she traveled to Ethiopia at least once a year from 2007 to 2011. A travel itinerary submitted indicates another trip scheduled for January 2012. She explains that she returned to Ethiopia frequently in 2009 and 2010 due to her son's ailing health and his eventual passing away in August 2011. No explanation was given for her other visits; thus, her ties to Ethiopia remain unclear. She states that she has been a resident of the United States for ten years, and all her commitments are in the United States. She also worries about her ability to secure employment in Ethiopia, especially given her education, age, physical pain and unemployment rates. Country-condition reports submitted corroborate the economic situation and also highlight the human-rights issues and treatment of women in Ethiopia.

The AAO has considered all aspects of relocation-related hardship, including the applicant's mother's close family ties in the United States, her obligations in the United States, her length of residency, her medical conditions, and country-conditions reports of Ethiopia. Considered in the aggregate, the AAO finds that the applicant's mother would suffer extreme hardship if she were to relocate to Ethiopia to live with the applicant.

Considered in the aggregate, the applicant has established that her mother would face extreme hardship if the applicant's 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. at 301. 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.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the Board 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 Board 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(i) relief must bring forward to establish that she 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 in this matter are the extreme hardship the applicant's U.S. citizen mother would face if the applicant is not granted this waiver, whether she accompanied the applicant or remained in the United States; her family ties to the United States; her good character; her employment and volunteer work in the United States; and her lack of a criminal record. The unfavorable factor in this matter is the applicant's fraudulent or willful materially misrepresentation to a U.S. immigration officer. Although the applicant's violation of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors.

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. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.