



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JAN 30 2013**

Office: PANAMA CITY, PANAMA

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and a citizen of Ecuador 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 sought admission into the United States through fraud or misrepresentation. The applicant is the daughter of a legal permanent resident of the United States and is the beneficiary of an approved Petition for Alien Relative. 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 father.

The director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision*, dated January 19, 2012.

On appeal, counsel asserts that director erred in finding the applicant inadmissible and concluding that the applicant had failed to demonstrate extreme hardship to her qualifying relative. *See Form I-290B, Notice of Appeal or Motion*, dated February 13, 2012. The applicant, through her counsel, submits additional evidence for consideration.

The evidence of record includes, but is not limited to: counsel's attachment to Form I-290B; statements from the applicant and her father; medical documentation for the applicant's father, including psychological evaluations; police reports for the applicant; statements from the applicant's employer, neighbors, and attorney in Ecuador; a death certificate for the applicant's mother; and copies of identification documents. The entire record was reviewed and all relevant evidence considered in reaching 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.

The record indicates that in 1999 the applicant presented a photo-substituted passport to apply for a nonimmigrant visa to enter the United States. The applicant contests her inadmissibility and states that she never applied for a visa previously; one of her relatives used her name to obtain the visa. On appeal, the applicant states that though the documents in her file at the U.S. Consulate have her name on them, they do not have her photograph or her fingerprints; she has not committed any crime. Through her counsel the applicant also submits police reports indicating she has no criminal record, a letter from an Ecuadorian official indicating the existence of only

one passport for the applicant, a statement from her former employer attesting to the applicant's good character and to her employment dates between June 1997 and May 2001, a statement from the applicant's neighbors indicating that she has not left the country, and a statement from her attorney indicating that he is gathering public and private documents to prove the applicant's innocence.

The AAO finds the applicant's evidence insufficient to overcome the consular officer's finding that she submitted a photo-substituted passport, because none of the evidence, other than the applicant's own statement, directly relates to the misrepresentation at issue, specifically, the use of a photo-substituted passport to try to obtain a benefit under U.S. immigration law. The assertions of the applicant are relevant evidence and have been considered. However, absent supporting documentation, these assertions are insufficient. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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 burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the evidence that the applicant submits on appeal fails to demonstrate that she did not submit a photo-substituted passport to try to obtain a non-immigrant visa. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having sought admission to the United States through fraud or material misrepresentation.

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. 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). In the instant case, the applicant's father is the qualifying relative.

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, 631-32 (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, "[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., In re 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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

The applicant's father states that the applicant is the only family member who still lives in Ecuador. She lives alone and he worries about her. Since the applicant's immigrant visa was denied in 2010, he has been in "anguish and desperation." He would like to visit the applicant, but he cannot because of his health and economic reasons. He feels lonely, anxious, and depressed since his wife died in November 2010. He states that he needs the applicant's "affection and company." Although his other children live in the United States, they are not able to be with him as much as they would like because of their own family obligations.

Evidence in the record corroborates that the applicant's father is receiving medical treatment and counseling for depression. In his psychological evaluation, [REDACTED] states that the applicant's father's depression, anxiety, and grief have developed as a result of his wife's sudden death and his prolonged separation from the applicant. He states that continued separation from the applicant puts the applicant's father "at risk of developing even more severe psychological impairment" and it will have a "negative impact on his ailing health." The applicant's father feels "increasingly alienated" from his children in the United States, because they are unable to meet his needs. His eldest daughter reported to [REDACTED] that the applicant's father listens only the applicant and they must call her before making any decisions about their father's care. She also told [REDACTED] that their father lives with her brother; she lives about an hour away and travels once a week to see him. She fears that when the applicant's father needs "a higher level of care," she would not be able to provide that for him. The applicant's father states that the applicant is very attached to him and she "would bring joy and solace to his life."

The record also indicates that the applicant's father was diagnosed with prostate cancer and underwent a prostatectomy in September 2011. He continues to receive care from an urologist and the medical evidence in the record corroborates his claims that he requires frequent hospital visits. [REDACTED] indicates that the applicant's father experiences urinary incontinence secondary to his cancer and has decreased motor functioning related to a degenerative spinal disease. He also reports cognitive deficits; the applicant's father was unable to correctly respond to questions of common knowledge. The applicant's father needs reminders to take his medications. The applicant's father also reported visual hallucinations of his deceased wife and thoughts about death and dying, particularly when he is alone. According to [REDACTED] the sudden loss of his wife has caused extreme emotional pain for the applicant's father. With a prolonged separation from the applicant, her father feels he has nothing to look forward to. [REDACTED] states that having the applicant with her father would improve his autonomy and his overall health. He recommends that the applicant's father continue with his psychiatric and psychological treatments and increase his social activities outside of the home.

Having reviewed the preceding evidence, the AAO finds it to establish that the applicant's father experiences extreme hardship resulting from his separation from the applicant. In reaching this conclusion, we note the applicant's father's psychological and medical conditions. The record establishes that the applicant's father is experiencing multiple stressors, and the stress resulting from their separation negatively impacts his physical and emotional well-being. He has a very close relationship with the applicant and needs the applicant for emotional support to overcome his grief for his deceased wife. The applicant's support is essential to prevent him from further decompensating psychologically. The record also establishes that the applicant's elderly father has ongoing medical problems and needs the applicant's assistance in his care. The applicant's father physically and cognitively is limited in his ability to care for himself. The record demonstrates that the applicant's father spends most of his time alone, and his other children are unable to provide the care he needs as his conditions worsen. The AAO concludes that, considering the evidence in the aggregate, the applicant's father experiences extreme hardship resulting from his separation from the applicant.

The AAO also finds the record to establish that the applicant's father would experience extreme hardship if he were to relocate to Ecuador. We note that the applicant's father is elderly and has multiple medical problems. He receives on-going treatment and requires frequent hospital visits as a result of his prostate cancer. Relocating and disrupting his care in the United States would have a negative impact on his recovery. The record also establishes that the applicant's father has physical and cognitive impairments, which would make it difficult for him to relocate. The AAO also notes that the applicant lives in a small town with a population of 6,000. Country-conditions information prepared by the U.S. Department of State on December 12, 2011, indicates that medical care in small cities in Ecuador is limited. The AAO concludes that considering the evidence in the aggregate, the applicant's father would experience extreme hardship, should he relocate.

When the specific hardship factors noted above and the hardships routinely created by the separation of families are considered in the aggregate, the AAO finds that the applicant has established that her father would face extreme hardship if the applicant's waiver request is denied. The applicant has established statutory eligibility for a waiver of her inadmissibility under section 212(a)(6)(C) of the Act.

In that the applicant has established that the bar to her admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

See Matter of Mendez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factor in the present case is the applicant's material misrepresentation to obtain admission into the United States, for which she now seeks a waiver. The mitigating factors include the applicant's legal permanent resident father, the extreme hardship to her father if the waiver application is denied, and the absence of a criminal record for the applicant.

The AAO finds that the immigration violation committed by the applicant is serious in nature and cannot be condoned. Nevertheless, when taken together, the mitigating factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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. *See* section 291 of the Act, 8 U.S.C. § 1361. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.