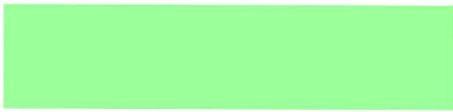


(b)(6)

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

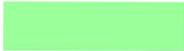


U.S. Citizenship
and Immigration
Services

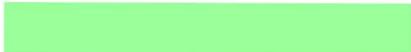


Date: JUN 18 2013

Office: NEW YORK

FILE: 

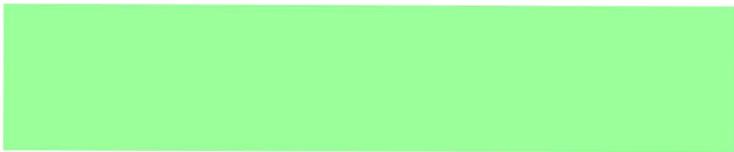
IN RE :

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.

Thank you

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg

Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Guyana 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 procuring admission to the United States through fraud or misrepresentation. The record reflects that the applicant entered the United States in July 1993 using a fraudulent passport. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with his lawful permanent resident mother.

The district director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated February June 12, 2012.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that the applicant's departure from the United States would bring chaos to his mother. The record contains an affidavit from the applicant's mother; a psychological evaluation and medical documentation for the applicant's mother; and financial documentation. 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 that:

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 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 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

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's mother is the only qualifying relative in this case. 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-Morales*, 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. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (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.

On appeal counsel asserts that the applicant's mother depends on the applicant to manage her health issues, assist with daily living, pay the mortgage and bills, run errands, and take her to medical appointments. Counsel also contends the applicant's mother depends on the applicant for emotional assistance.

In her affidavit the applicant's mother states her other son who had been in the United States is now spending much of his time in Guyana, visiting the mother one month a year. She states she also has a daughter in Canada and four other children in Guyana waiting to emigrate, so she has no one to care for her there and does not want to give up her immigration status. She states she needs the applicant here to assure her mortgage and other bills are paid, and that if he departs she will lose her home to foreclosure. She states she suffers with Osteoporosis, osteoarthritis, diabetes and hypertension, taking multiple medications for which she needs the applicant to assist her. She also states that Guyana has a high crime rate and she would not receive the same quality health care there that she receives in the United States.

A psychological evaluation concludes the applicant's mother has significant psychological distress caused by physical impairments from an injury and compounded by the potential loss of the applicant. The evaluation notes she had been able to cope by being active and social in the community, but has seen a physical deterioration and withdrawal from the community and now needs basic help from the applicant. The evaluation notes the mother's primary symptoms are lethargy, poor recall, and social impairment and difficulty functioning. The evaluation states the applicant is the key to her emotional well-being, suggests that she follow up with her primary care provider to determine treatment, and recommends therapy.

Medical documentation indicates the applicant's mother was treated for chest pain and dizziness following a fall that resulted in a femur fracture. It noted she has a medical history including high blood pressure, diabetes, Osteoarthritis, hyperlipidemia, and osteoporosis.

The AAO finds that the record establishes that the applicant's qualifying relative mother would suffer extreme hardship as a consequence of being separated from the applicant. The record shows that the applicant's mother experiences emotional distress due to physical impairments that is increased by fears of separation from the applicant, upon whom she depends to assure she receives health care, takes proper medication, and meets financial obligations, including her mortgage. Given the mother's age, deteriorating health, and reliance on the applicant for daily needs and emotional support, it has been established that the applicant's mother would suffer extreme hardship if she were to remain in the United States without the applicant.

The AAO also finds the record establishes that the applicant's mother would experience extreme hardship if she were to relocate to Guyana to reside with the applicant. The applicant's mother states she cannot return to Guyana because of poor health care and high crime there. According to the U.S. Department of State, "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." It also states that serious crime, including murder and armed robbery, continues to be a major problem. *U.S. Department of State, Bureau of Consular Affairs, Country Specific Information – Guyana, April 2, 2013.*

The applicant's mother also states that she does not want to give up her immigration status. A lengthy departure from the United States could cause her to lose her U.S. lawful permanent resident status. See section 223 of the Act, 8 U.S.C. § 1203. Given the mother's age and limited mobility, she would be unlikely to be able to travel to the United States with frequency to retain her lawful residence status and, further, would likely lose her home in the United States if she relocated to Guyana to reside with the applicant.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his lawful permanent resident mother would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the circumstances presented in this application rise to the level of extreme hardship.

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 his 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 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 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 in this matter are the hardships the applicant's lawful permanent resident mother would face if the applicant is not granted this waiver, his employment, payment of taxes and child support obligations, and apparent lack of criminal convictions. The unfavorable factors in this matter are the applicant's misrepresentation to enter the United States.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violations of immigration law, the AAO finds 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 his burden and the appeal will be sustained.

ORDER: The appeal is sustained.