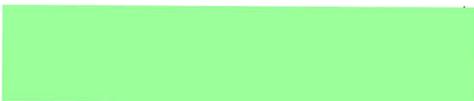


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **MAR 09 2013** OFFICE: NEW YORK, NEW YORK

FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The District Director, New York, New York, denied the waiver application. The applicant, through counsel, appealed the District Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. On May 23, 2012, counsel filed a motion to reopen and reconsider the AAO's decision in accordance with 8 C.F.R. § 103.5. The motion will be granted. The previous decision of the AAO will be affirmed.

The record reflects the applicant is a native and citizen of Trinidad and Tobago 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 having sought to procure a benefit under the Act through misrepresentation. The District Director concluded the applicant failed to establish extreme hardship would be imposed upon a qualifying relative, and denied her Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The AAO affirmed the District Director's decision on appeal.

On motion, counsel contends the AAO abused its discretion as its dismissal of the applicant's appeal was arbitrary and capricious and illogical because the evidentiary documentation concerning the applicant's spouse's diabetic condition demonstrates the applicant's spouse is unable to remain in the United States without the applicant or to travel to Trinidad and Tobago to be with the applicant.

The record includes, but is not limited to: briefs and correspondence from counsel; letters of support; identity, medical, employment, and financial documents; and Internet articles. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in relevant part:

(i) 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.

...

(iii) Waiver Authorized.-For provision authorizing waiver of clause (i), see subsection (i).

The District Director found the applicant inadmissible under section 212(a)(6)(C) of the Act for having submitted to U.S. immigration officials, on or about October 1, 1991, a Temporary Protected Status (TPS) Eligibility Questionnaire, Application for Employment Authorization (Form I-765), and supporting documentation as a national of Liberia. On motion, the applicant does not contest the finding of inadmissibility. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and she requires a waiver under section 212(i) of the Act.

Section 212(i) of the Act provides, in relevant part:

(1) The Attorney General [now Secretary of Homeland Security (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. Hardship to the applicant or the applicant's children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband is the only demonstrated qualifying relative in this case. 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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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 BIA 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., *In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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, 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 support of the applicant’s motion, counsel contends the applicant’s spouse would suffer extreme medical hardship upon separation from the applicant as he has undergone four diabetic-related episodes requiring him to go to the hospital for which the applicant was present and thereby able to provide assistance, and another diabetic attack may have grave implications. Counsel also contends the applicant’s spouse would suffer extreme economic hardship in the applicant’s absence as previously established and that the applicant and her spouse would have difficulties supporting two households.

Although the applicant’s spouse may experience medical and economic hardship in the applicant’s absence, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record is sufficient to establish the applicant’s spouse has been under the care of [REDACTED] for various medical conditions, including diabetes. See *Medical Letter*, dated May 16, 2012. And, although [REDACTED] indicates the applicant’s spouse has experienced unconsciousness on four occasions due to low sugar levels, the record indicates his medical conditions are generally controlled with medications, including his diabetes. See *Medical Letters*, dated May 15, 2009 and September 3, 2009.

Further, in its previous decision, the AAO noted the record did not include evidence of: the applicant’s spouse’s current mental health and his inability to function in the applicant’s absence because of any mental health conditions; his inability to meet his financial obligations or to economically support himself in the applicant’s absence; or of labor and employment conditions in Trinidad and Tobago, demonstrating the applicant’s inability to contribute to the maintenance of her

and her spouse's households. The AAO notes the motion does not include any evidence to address these concerns. The AAO is thus unable to conclude the record establishes the applicant's spouse's hardship would go beyond that which is commonly expected.

The AAO notes the concerns regarding the hardship the applicant's spouse may experience in the applicant's absence, but finds that even when this hardship is considered in the aggregate, the record fails to establish the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

In support of the applicant's motion, counsel contends the AAO assumes, without offering any proof, that the applicant's spouse and son could follow and join the applicant in Trinidad and Tobago. Counsel also contends the applicant's spouse and son would suffer extreme hardship upon relocation to Trinidad and Tobago as: they are natives of Nigeria and the United States, respectively, and neither of them have ties to Trinidad and Tobago or ever resided there; and there are lengthy immigration processes to obtain entry and residency, a work permit, and permission to attend school there.

The AAO notes that in its previous decision, it determined the applicant's spouse would experience extreme hardship upon relocation to Trinidad and Tobago because of his length of residence and strong ties to the United States, his lack of ties to Trinidad and Tobago, and the need for ongoing treatment for his medical conditions, along with the normal hardships associated with relocation. The AAO notes the spouse's circumstances have not improved since the AAO's previous decision. Accordingly, the record continues to reflect the cumulative effect of the hardship the applicant's spouse would experience upon relocation due to the applicant's inadmissibility rises to the level of extreme.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. In Re Pilch*, 21 I&N Dec. at 632-33. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the her spouse in this case.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion will be granted and the previous decision of the AAO will be affirmed.

ORDER: The motion is granted. The previous decision of the AAO is affirmed. The application remains denied.