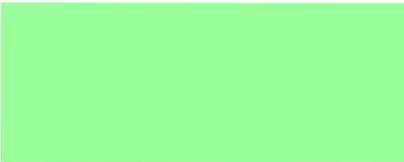


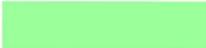


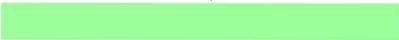
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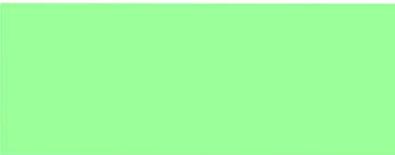
Office: PANAMA CITY

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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,



Ron Rosenberg  
Acting 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 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 attempting to procure admission to the United States through fraud or misrepresentation. He 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 his U.S. citizen parents.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to his parents and denied the application accordingly. *See Decision of Field Office Director*, dated May 24, 2012.

The record also reflects that the applicant was convicted of False Use of a Passport. The Field Office Director did not address whether the applicant's conviction is a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Nevertheless, because the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is inadmissible under section 212(a)(2)(A)(i)(I).

On appeal, counsel for the applicant asserts that the applicant's parents need the applicant's assistance because they are elderly and have serious medical problems. Counsel states that the applicant's mother's health is deteriorating and that she has dementia which has worsened. Counsel also notes that the applicant's father works as a security guard despite his ill health and that he is unable to provide proper care to the applicant's mother. Further, counsel indicates that although the applicant's sister lives nearby, she is unable to provide the care her parents need due to her work and school schedule and her own medical problems. Finally, counsel contends that the applicant's parents would be unable to obtain adequate medical care in Guyana and that a departure from the United States would force the applicant's father to leave his job prior to becoming eligible for Social Security benefits. *Counsel's Brief*.

The record includes, but is not limited to: statements from the applicant, his father, and his sister; medical records regarding the applicant's parents and sister; a psychological assessment and an update to that assessment; country conditions information; Social Security records regarding the applicant's parents; conviction records; letters of support from friends of the applicant; and two offers of employment for the applicant. 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 [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.

In the present case, the record reflects that on October 6, 2005, the applicant arrived at Charlotte International Airport and presented a passport issued in Trinidad and Tobago in the name of [REDACTED]. During secondary inspection, officers concluded that the passport had been altered to include the applicant's photograph and that he was not the rightful bearer of the document. However, the applicant continued to assert that he was [REDACTED] and that he had lawfully acquired the passport in Trinidad and Tobago in 1996. The applicant was detained and charged with forgery and fraudulent use of a passport. On October 11, 2005, he appeared before a U.S. Magistrate Judge and stated that his true name was [REDACTED]. He remained in detention until eventually pleading guilty to False Use of a Passport in violation of 18 U.S.C. § 1543. On March 7, 2006, he received a sentence of imprisonment for time served, a fee of \$100.00, and two years of supervised release.

The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States through fraud or misrepresentation. He does not contest this finding of inadmissibility on appeal. He is eligible to apply for a waiver under section 212(i) of the Act as the son of U.S. citizens.

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 himself can only be considered insofar as it causes extreme hardship to his qualifying relatives. 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 (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 U.S. 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, 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.

In his statement, the applicant contends that he is very close to his family and that he worries about his parents. He states that his mother had a nervous breakdown in the past and that his father has informed him that she does not eat or sleep properly because she is upset about being separated from the applicant. The applicant asserts that according to his culture, it is his responsibility as his parents' only son to care for them. He states that he regrets attempting to enter the United States illegally and that he did so due to his desire to help his parents.

The applicant's father states that he works four days per week as a security guard and that he suffers from back pain and other medical problems. He states that his wife has not been able to work since 2005 because she suffers from anemia, lipids, dementia, osteoporosis, C-spine osteoarthritis, and hypertension. He indicates that his wife cannot leave the house alone, so he takes her to all of her doctor's appointments. He states that his wife's dementia is progressing and that it "has taken a huge toll" on him. He asserts that although his daughter sometimes assists him in caring for his wife, he cannot rely on her due to her busy work and school schedule. He fears that he and his wife will be forced to rely on government assistance if the applicant cannot come to the United States to care for them.

The applicant's father also states that he and his wife would be unable to move to Guyana. He explains that they would not have health insurance there and would not be able to afford adequate care. He also states that medical care in Guyana is poor and that his wife would not receive the treatment she needs. Additionally, the applicant's father notes that he would lose his job if he were to leave the United States and that he is not yet eligible for Social Security benefits, so he would be unable to support himself and his wife. He fears that the applicant would be unable to support them in Guyana, so he and his wife would live in poverty and his wife's health would further decline.

The applicant's sister indicates that she works long hours at a very demanding job, and that she also attends courses to improve her job skills. She states that she does not have enough time to give proper care to her mother, who needs assistance with showering, taking medications on time, and attending doctor's appointments. The applicant's sister also notes that her mother currently spends long periods of time at home alone despite the fact that she needs increasing supervision. The applicant's sister asserts that she once arrived home to find that her mother had fainted and hit her head, resulting in an open wound for which she required emergency medical attention. According to the applicant's sister, the applicant could assist in caring for their mother. The applicant's sister further notes that she has health problems of her own, including fluid in her lungs, depression, and anxiety. She contends that these issues will prevent her from providing proper care to her mother.

In a psychological evaluation, a therapist indicates that the applicant's mother has short term memory loss and that she is depressed due to her separation from the applicant as well as her continuing sadness over the premature death of her other son many years ago. The therapist indicates that the applicant's mother has a sleep disorder and that she wakes up in the middle of the night calling the applicant's name. According to the therapist, if the applicant is unable to come to the United States, his mother "would be at severe risk of falling into a major clinical depression, perhaps requiring hospitalization." See *Psychosocial/Family Assessment*, [REDACTED] LCSW, ACSW, dated February 16, 2011.

The therapist also notes that the applicant's mother's health, particularly her dementia, is worsening and that she is frail, needing assistance with daily activities. The therapist states:

"She has pain in her shoulders, wrists and hands. It is hard for her to bend down to put[] her shoes on. She cannot lift heavy things and cannot do simple household tasks like opening jars. She cannot walk long distances because she becomes fatigued. If she goes more than a few blocks from the house, she cannot find her way back on her own. She puts things down, and then cannot remember where she put them. During this interview, [the applicant's mother] was unable to recall a short list of common words told to her 10 minutes earlier. As Dementia is progressive, her cognitive and physical abilities will continue to deteriorate, and she will require more and more help."

*Id.*

In an update to the psychological assessment, the therapist reports that the applicant's mother's dementia has advanced to the point that "she is not able to engage in more than a very brief conversation." See *Update/Addendum to Psychosocial/Family Assessment*, [REDACTED] LCSW, ACSW, dated June 12, 2012. The update also indicates that the applicant's mother has back pain and uses a cane because she is "unsteady on her feet." *Id.* The therapist states that the applicant's mother seems much older than she is because of her illnesses.

Additionally, the therapist indicates that the applicant's father has health problems, including hypertension and hypercholesterolemia. Despite his medical issues, the applicant's father works the night shift as a security guard. He takes three trains and a bus to get to work, commuting nearly two hours each way. He works two 11-hour shifts, one 12-hour shift, and one six-hour shift per week and is on his feet most of the time. In her updated assessment, the therapist states that the applicant's father was admitted to the emergency room in October 2011 for chest pain and shortness of breath due to stress.

The AAO finds that the applicant's parents will experience extreme hardship if they continue to be separated from the applicant. The record reflects that his father, age 67, commutes a long distance and works long hours to support his family despite his age and his medical conditions. Not only is he responsible for providing for his wife financially, but the applicant's father also

must provide an increasing level of care and supervision for his wife as her health deteriorates. Evidence in the record confirms that the applicant's mother, age 65, has been diagnosed with dementia, osteoporosis, anemia, lipids, C-spine osteoarthritis, and hypertension and that her "condition is worsening daily." See *Letter from [REDACTED]* dated June 15, 2012. The record also establishes that the applicant's mother was admitted to the emergency room for an open wound on her scalp on March 14, 2012 and for abdominal pain on November 13, 2011. See *Patient Discharge Reports, Emergency Department, [REDACTED]*. The applicant's mother is also suffering from depression due to her separation from the applicant. Additionally, the applicant's sister confirms in her statement that she is unable to provide the necessary level of care to her parents.

The AAO also finds that the applicant's parents would experience extreme hardship if they were to relocate to Guyana. Both of the applicant's parents are aging and his mother in particular is suffering from serious, degenerative diseases. They are under an established program of medical care in the United States and they would be unlikely to afford such specialized treatment in Guyana. Additionally, the applicant's father would lose his job if he was to relocate and he may have difficulty finding gainful employment in Guyana due to his age and health conditions. Furthermore, the applicant's parents have been U.S. citizens for several years and they have established ties here. Relocating to Guyana after building a life in the United States, particularly in light of the applicant's mother's depression, would likely be difficult for them. The applicant's parents also have close ties to their daughter, who lives and works in the United States.

In the aggregate, the applicant's parents' serious health concerns, their ties to the United States, and their financial difficulties would create extreme hardship for them if the applicant's waiver application were denied. See *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996); see also *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 566 (BIA 1999). Therefore, the AAO finds that the applicant has met his burden of demonstrating extreme hardship to his qualifying relatives as required by section 212(i) of the Act.

In that the applicant has established that the bars to his 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).

*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 favorable factors in this case include the extreme hardship the applicant's parents would suffer if the waiver application were denied; the fact that the applicant's sister also resides in the United States; and the fact that the applicant has two offers of employment here. Additionally, the record contains several letters of recommendation from friends who state that the applicant is a person of good moral character. The unfavorable factors are the applicant's attempt to obtain admission to the United States through fraud or misrepresentation and his resulting conviction for False Use of a Passport.

Although the applicant's criminal conviction is serious and his 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 his burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.