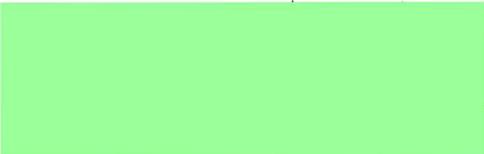




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **MAR 22 2013** Office: SAN SALVADOR (PANAMA CITY)

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:

SELF-REPRESENTED

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 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 dismissed.

The applicant is a native and a citizen of Ecuador 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). She is the daughter of two U.S. citizens. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen parents, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on February 12, 2012.

On appeal, the applicant's father asserts that insufficient weight has been given to the evidence submitted to establish they will experience extreme hardship. *Form I-290B*, received March 5, 2012.

The record contains, but is not limited to, the following evidence: two statements from the applicant's father; two statements from [REDACTED] M.D., pertaining to the medical conditions of the applicant's parents; a copy of a hand-written chart of medications taken by the applicant's mother; a hand-written prescription note from [REDACTED] M.D., pertaining to the applicant's mother; a statement from [REDACTED] M.D., F.A.C.S., pertaining to back problems of the applicant's mother; and a copy of a patient report form pertaining to the applicant's mother, dated February 17, 2011. The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(6)(C) of the Act states, in pertinent 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 chapter is inadmissible.

The record indicates that the applicant presented the passport of another person when attempting to enter the United States in 1999, materially misrepresenting her identity. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding.

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

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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. Hardship to an applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parents are the qualifying relatives 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. 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 applicant’s parents are qualifying relatives in this proceeding. As such, the AAO must consider what impacts they would endure upon relocation to reside with the applicant. In this case, the applicant’s parents have each asserted that they suffer from numerous medical conditions and have to take medications for their conditions. *Statement of the Applicant’s Father*, dated March 1, 2012.

An examination of the record reveals substantial documentation corroborating the applicant’s father’s assertions. Evidence indicates that the applicant’s mother is being treated for depression and hypothyroidism, non-insulin dependent diabetes-mellitus, and is taking numerous medications for her conditions. *Statement of* [REDACTED] M.D., dated February 22, 2012.

[REDACTED] also states the applicant’s father is being treated for asthma, bodily inflammation, hypertension and benign prostatic hypertrophy.

Based on this evidence the AAO can conclude that the applicant’s parents are each being treated for various medical conditions. Disrupting the continuity of care between the applicant’s parents and their doctor, as well as disrupting access to their medications, would result in a substantial hardship upon relocation. In addition, the record indicates that the applicant’s parents have significant family ties to the United States, have resided in the United States for a significant period of time and are close to retirement age.

When these factors are considered in the aggregate, the AAO finds them to rise above the common impacts to a degree of extreme hardship.

With regard to the hardship impacts arising from separation, the applicant's father asserts he needs the applicant, his daughter, in the United States to care for him and his spouse. *Statement of the Applicant's Father*, dated March 1, 2012.

While the medical documentation demonstrates that the applicant's parents suffer from certain medical conditions, they are not probative enough to establish that they will experience extreme hardship based on those conditions alone. The statements from doctors pertaining to the applicant's parents do not discuss how the conditions affect their ability to function on a daily basis, or what physical assistance they need. While this evidence is not required to establish extreme hardship, if an applicant asserts that her qualifying relative has a medical condition requiring caretaking then the record must demonstrate that said assertion is a fact. In addition, as noted by the Field Office Director, the record does not demonstrate by a preponderance of the evidence that other family members are unable to assist her parents with any physical or financial needs in order to mitigate the impact of her departure.

Although the record does not demonstrate that the applicant's parents will suffer extreme physical or medical hardship, we can give some consideration to the emotional impact arising from being separated from their daughter at their advanced age and with serious medical conditions. The AAO will give some consideration to the emotional impact when aggregating the impacts on the applicant's parents due to separation.

The record does not articulate any other basis of hardship on the applicant's parents due to separation. There is insufficient evidence to determine the presence of uncommon financial hardship or other physical hardships which would impact a determination of extreme hardship to the applicant's parents. Even when considered in the aggregate with the common impacts of separation, the AAO does not find the record to support that the applicant's parents will experience extreme hardship due to separation.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, see also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.