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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office  
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Washington, DC 20529-2090

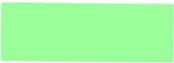


U.S. Citizenship  
and Immigration  
Services



DATE: MAY 01 2013

OFFICE: NEWARK, NJ

FILE: 

IN RE: 

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 cursive script that reads "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the Field Office Director, Newark, New Jersey. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motion to reopen will be granted 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 pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission into the country by willfully misrepresenting a material fact. The applicant's mother is a U.S. citizen, and the applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). The applicant is also now married to a U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with her mother, spouse and children.

The Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director*, dated November 4, 2010. On appeal, the AAO concurred with the Field Office Director that extreme hardship to a qualifying relative had not been established, as required by the Act. Consequently, the appeal was dismissed. *Decision of the AAO*, dated October 5, 2012.

On motion, the applicant's attorney asserts that new facts demonstrate that the applicant's mother and spouse will experience extreme hardship. New evidence was also provided on motion to supplement the record.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); Notices of Appeal or Motion (Forms I-290B); a brief written on behalf of the applicant; relationship and identification documents for the applicant, her mother and her son; affidavits from the applicant, qualifying parent and her sister; medical and psychological evidence; country-conditions reports; photographs; academic information for the applicant's son; address-change information; financial documentation; an Application to Register Permanent Residence or Adjust Status (Form I-485) and an approved Form I-130.

In support of the instant motion, the applicant submits affidavits from her qualifying parent and qualifying spouse; a copy of the applicant's driver's license; a marriage license; additional materials documenting the qualifying parent's disability; a letter from a psychologist regarding the qualifying parent; additional academic information regarding the applicant's son; a naturalization certificate for the applicant's husband; reference letters regarding the applicant and additional country-condition materials regarding Guyana. The entire record was reviewed and considered in rendering this decision.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on

an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Counsel on motion asserts that new facts demonstrate that the applicant's mother and spouse will experience extreme hardship. The evidence submitted on motion includes, but is not limited to, affidavits from the qualifying parent and spouse, additional materials detailing the qualifying parent's disability and psychological issues, additional proof of address for the applicant and country-condition materials regarding Guyana. The AAO will grant the motion to reopen the proceedings and consider the new documentation submitted in support of the motion to reopen.

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

- (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 reflects the applicant attempted to gain admission into the United States on October 20, 2000, by using a photo-substituted passport from Barbados, issued in the name of [REDACTED]. The applicant requested asylum and was paroled into the country pending her hearing. She has not departed the country since that time. An immigration judge denied the applicant's asylum claim on May 15, 2001, and the Board of Immigration Appeals (Board) affirmed the denial on February 10, 2003. The record establishes the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for attempting to procure admission into the country by willfully misrepresenting a material fact. Counsel does not contest the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act states:

The Attorney General [now, Secretary, Department 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.

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 and husband are the only 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-Moralez*, 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 AAO concluded that the applicant on appeal failed to establish that her qualifying parent would suffer extreme hardship if she remained in the United States and the applicant returned to Guyana. On motion, the qualifying parent states that she is completely dependent upon the applicant to care for her due to her disability and that the applicant moved in with her on November 19, 2010, because she was unable to care for herself. The record was supplemented to establish that the applicant and her son have moved into her mother's home. The record contains a driver's license confirming her residential address; a birth certificate for the applicant's youngest son indicating the applicant's residence in [REDACTED] school records for the applicant's oldest son demonstrating his matriculation in a school in [REDACTED] and reference letters from neighbors in [REDACTED]. Further, affidavits and letters from the qualifying parent, her doctor, the qualifying spouse and their neighbors demonstrate that the applicant cares for her mother, including driving her to doctor's appointments and to the pharmacy, as her mother is unable to drive, and preparing her meals and shopping.

The most recently submitted doctor's letter, as well as other medical evidence in the record, reflects that the applicant's mother suffers from hypothyroidism, diabetes mellitus, hypertension, dysuria and back pain. A doctor from [REDACTED] states that in May 2010, the applicant's mother was treated for an injury that occurred in March 2010. On motion, workers compensation documentation was provided to corroborate claims regarding the applicant's mother's work-related injury. Such evidence confirms that her injury left her 100% impaired and that she has been receiving and is entitled to disability benefits. As such, the additional documentation provided on motion clarified the extent of the applicant's mother's inability to care physically or financially for herself. A letter from the applicant's mother's psychologist submitted on motion likewise confirms that the applicant's mother is also suffering from major depressive disorder with symptoms of suicidal ideation, poor appetite and excessive crying. Her psychologist concludes that the applicant's mother would be in "grave danger" and her life would be at risk if she were separated from the applicant. Considering the evidence of the applicant's qualifying mother's medical and emotional hardships in the aggregate, as well as her dependence and reliance upon the applicant, the AAO concludes that she would experience extreme hardship due to her separation from the applicant.

The AAO found that the applicant had not met her burden of showing that her qualifying parent would suffer extreme hardship if she relocated to Guyana to be with her. On motion, additional documentation was provided to demonstrate the hardship to her qualifying parent. The qualifying mother now has two U.S. citizen grandchildren, has lived in the United States for over 15 years, and is a U.S. citizen. In addition, the applicant's mother is 100% disabled, suffering from multiple medical issues and taking several medications. The record contains country-condition documentation indicating that Guyana faces considerable health-care challenges, including unavailability of integrated health information, limited infrastructure facilities, a high burden of

chronic non-communicable diseases, persistent and emerging communicable diseases, high maternal and infant mortality, a high burden of mental disorders, vulnerability to natural and man-made disasters and generally poor quality of services. As such, the applicant's mother may have difficulty receiving care for her medical issues in Guyana. The AAO concludes that, considering the qualifying relative's length of residence in the United States and her family ties to the United States, as well as her potential difficulties to adjusting to life in Guyana due to her medical issues, the qualifying relatives would suffer extreme hardship if they relocated there to be with the applicant.

The applicant's attorney asserts that the applicant's spouse also will experience extreme hardship if the applicant's waiver application is not granted. The record reflects that he has lived in the United States for over 27 years and is a U.S. citizen. He also states that the applicant cares for their child, enabling him to work full-time. However, there is limited evidence regarding his potential hardships. Nonetheless, the record contains sufficient evidence to demonstrate that the applicant's mother will experience extreme hardship upon separation from the applicant and upon her relocation to Guyana to be with the applicant.

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 extreme hardships the applicant's U.S. citizen mother and spouse would face if the applicant is not granted this waiver, regardless of whether they accompanied the applicant or remained in the United States, her good character as described in letters from family and friends, and her care for her qualifying parent and for her qualifying spouse's children. The unfavorable factor is her use of a fraudulent passport to enter the United States.

Although the applicant's immigration violation is serious and cannot be condoned, the positive factors in this case outweigh the negative factors. The AAO therefore 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 her burden and the appeal will be sustained.

**ORDER:** The motion will be granted, the previous decision withdrawn and the waiver application approved.