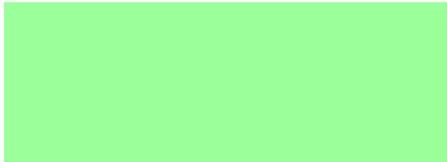


(b)(6)

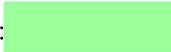
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



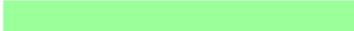
U.S. Citizenship
and Immigration
Services



DATE: NOV 05 2013 OFFICE: PANAMA CITY

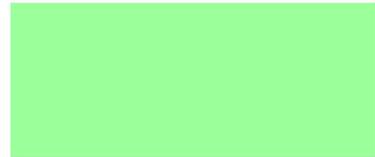
FILE: 

IN RE:

APPLICANT: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B), and under Section 212(i) of the Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Panama City, Panama. A subsequent appeal was dismissed by the District Director as it was not timely filed. Counsel for the applicant submitted evidence indicating the untimely filing was due to circumstances outside of the applicant's control, namely the closure of post offices due to Hurricane Sandy. An appeal which is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(I). However, as a matter of administrative discretion, the AAO will consider the merits of the appeal on certification.¹ The appeal will be dismissed.

The applicant is a native and citizen of Panama who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. She was also 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 having procured admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The District Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of District Director* dated October 3, 2012. As stated above, the District Director dismissed a subsequent appeal as untimely filed. *See District Director's decision on appeal*, November 19, 2012. That decision is withdrawn.

On appeal, filed on November 19, 2012 and received by the AAO on August 7, 2013, counsel submits a brief in support, statements from the applicant and her spouse, a curriculum vitae, medical and educational records, copies of U.S. income tax returns, financial documents, passport copies, correspondence between the applicant and her spouse, a marriage certificate, photographs, and articles on country conditions in Guyana. In the brief, counsel contends the applicant is not inadmissible for fraud or misrepresentation of a material fact, because she did not indicate she was a U.S. citizen when she crossed the border from Canada into the United States in 2000. Counsel further asserts that the applicant's spouse will experience extreme hardship in the event of separation from the applicant and upon relocation to Guyana.

Counsel also submits a copy of an AAO decision. The AAO notes that only AAO decisions that are published and designated as precedents in accordance with the requirements discussed in 8 C.F.R. § 103.3(c) are binding on Service officers. The decision submitted by counsel is

¹ Like any USCIS office, the AAO may avail itself of the certification process. *See* 8 C.F.R. § 103.4(a). As a matter of administrative discretion, the AAO may certify a decision to itself for review. The AAO limits this practice to cases involving exceptional circumstances; it "is not meant to be used as a general cure for filing defects or to otherwise circumvent the regulations . . ." *Matter of Jean*, 23 I&N Dec. 373, 380 n 9 (AG 2002). The present case, where the timely filing was impeded by an act of nature, warrants such review.

unpublished and not designated as a precedent decision. The findings made in that AAO decision, therefore, have no binding precedential value for purposes of the applicant's case.

The record includes, but is not limited to, the documents listed above, other statements from the applicant and her spouse, educational records, documentation of birth, marriage, divorce, residence, and citizenship, other applications and petitions, documentation of removal proceedings, correspondence from USCIS, and photographs. 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.

The District Director found that in 2000, the applicant crossed the border between the United States and Canada as a U.S. citizen. *See Decision of District Director*, September 25, 2012. The District Director concluded that although insufficient information was provided about the crossing, the applicant provided false information or committed misrepresentation, and is therefore inadmissible under section 212(a)(6)(C)(i) of the Act. *Id.* On appeal, the applicant contends she was undetected and consequently, not inspected when she crossed the border in a trailer truck. The applicant claims she did not make any misrepresentations or fraudulent statements to U.S. immigration officials, as she did not actually encounter any.

Documentation of record does not support that the applicant presented herself as a U.S. citizen to immigration officials in 2000, nor is there a record of any statements the applicant made during her 2000 entry into the United States. Furthermore, an immigration judge accepted the applicant's admission that she entered the United States without inspection on or about March 13, 2000, determining she was inadmissible as charged. *See Written decision of immigration judge*, December 28, 2005. There is no documentation indicating the immigration judge's finding should be disturbed. As such, the AAO finds there is insufficient evidence of record to find the applicant made a fraudulent statement or a material misrepresentation pursuant to her entry in 2000. Therefore, based on the present record, the applicant is not inadmissible under section

212(a)(6)(C) of the Act for actions related to her 2000 entry into the United States. If the District Director determines that there is additional evidence of fraud or misrepresentation that evidence should be examined in any future proceedings.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

....

(v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

As stated above, the record reflects that the applicant entered without inspection on March 13, 2000. She accrued unlawful presence from the date of her entry until she was granted voluntary departure by an immigration judge on December 28, 2005.² Inadmissibility due to the applicant's unlawful presence in the United States is not contested on appeal. The AAO therefore finds the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for a period of ten years after her last departure. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. citizen spouse.

² The record reflects that the applicant timely departed the United States in compliance with her grant of voluntary departure.

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 v. I.N.S.*, 138 F.3d

1292 (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.

The applicant's spouse contends he will experience family-related, financial, emotional, and cultural hardship upon continued separation from the applicant. The spouse explains that the applicant is pregnant with his child, and he worries about their safety in Guyana. Medical records related to the applicant's pregnancy are submitted in support. The spouse contends he would never separate his child from the applicant, but he and his relatives would miss having his child in the United States. He adds that he also misses the applicant's companionship, and the separation is causing mental exhaustion and depression. The spouse moreover claims that he has difficulties meeting his financial obligations, which include a mortgage, student loan payments, and supporting himself and the applicant in Guyana, without the applicant's additional income. Copies of U.S. federal income tax returns, a mortgage statement, tax assessments, vehicle titles, and student loan statements are present in the file. The spouse also states that the applicant has been helpful with proofreading his papers, and will continue to be so in the future. He adds that the applicant helps him maintain his knowledge of Guyanese culture and traditions, and that she cooks well-balanced meals for him.

The spouse claims he will also experience extreme hardship upon relocation to Guyana. He indicates that he will fear for his safety given the human trafficking and criminal activity in that country. The spouse additionally asserts that he will have great difficulty finding suitable employment in Guyana because he is obtaining a doctorate in Homeland Security. Educational records and a resume are submitted in support. He adds that if he works in law enforcement or policy in Guyana, he will become even more of a target for criminal activity. The spouse states that his years of hard work and education in the United States would not pay off, as he would not be able to find a job which would allow him to meet his financial obligations, including his mortgage and student loan payments. The spouse contends that if he relocated to Guyana, he would be separated from his parents, sister, grandmother, and other extended family.

Despite submission of mortgage and student loan statements, the record does not contain sufficient evidence of the spouse's or the applicant's household expenses to support assertions of financial hardship. The applicant further fails to provide any evidence regarding her own employment and earnings, and whether she would be able to contribute financially if she could join her spouse in the United States. Without sufficient details and supporting evidence of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse faces. Furthermore, as the applicant's spouse does not indicate that the applicant's proofreading skills are necessary for his current employment, or that others cannot assist him with this, the AAO cannot evaluate the hardship the spouse will experience without the applicant's help in this respect.

The record reflects that the applicant's spouse will experience emotional hardship upon continued separation from the applicant and his child. However, there is no evidence indicating that the spouse's hardship due to concerns for their safety is based on the applicant's experiences in Guyana, or that she has been the victim of any crimes there. Moreover, there is no indication that the applicant or her spouse would be subject to violations as noted in the 2011 UNHCR report, nor is there any current U.S. Department of State travel warning issued for Guyana. Therefore, although the applicant has shown her spouse experiences emotional difficulties due to the present separation from his wife of three years, the applicant has not provided sufficient evidence to demonstrate that these difficulties are exacerbated by objective, substantiated fears for her safety.

The applicant's spouse stated that he misses his wife, and that she helps keep him connected with Guyanese food, culture, and traditions. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, emotional, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant remains in Guyana without her spouse.

The applicant has established, however, that her spouse would experience extreme hardship upon relocation to Guyana. The record indicates that the spouse was born in Guyana, which indicates that he should be familiar with life and culture in the country. However, the applicant has also submitted documentation indicating that he is pursuing a PhD in public policy, with a specialization in Homeland Security. Therefore, the spouse's assertions with respect to finding suitable employment in Guyana given that his educational credentials are geared towards a career in U.S. public policy are supported by evidence of record. Furthermore, although he was born in Guyana, the record reflects that he has family ties in the United States, including his parents, sister, and extended family. In addition to family ties, the spouse has demonstrated that he has economic ties and responsibilities in the United States, such as student loans and a mortgage.

In light of the evidence of record, the AAO finds the applicant has established that her spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Guyana.

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 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. 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 relative in this case.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. Citizen spouse as required under section 212(a)(9)(B)(v) 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 application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.