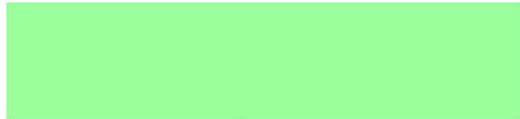




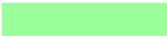
**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



DATE: **SEP 25 2013**

Office: LOS ANGELES, CA

FILE: 

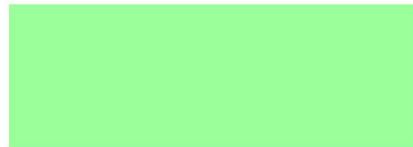
IN RE:

Applicant: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (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.

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Los Angeles, California, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Iran who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is the daughter of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her father in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends that the applicant established extreme hardship, particularly considering her father's health problems and country conditions in Iran.

The record contains, *inter alia*: a letter and an affidavit from the applicant; a letter and an affidavit from the applicant's father, [REDACTED] a letter and a doctor's note from [REDACTED] physician; a letter from the applicant's brother; a copy of the U.S. Department of State's Report on International Religious Freedom for Iran and other background information; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

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.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien. . . .

In this case, the record shows that in 2000, the applicant attempted to enter the United States using another person's Form I-551. In addition, the record shows that the applicant submitted two birth certificates with her asylum application, one of which was found to be counterfeit and the other

which could not be authenticated. Counsel does not contest the applicant's inadmissibility on appeal. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's father, [REDACTED] states that he is ninety-one years old. He contends he is a very sick man, has problems with his heart, has difficulties breathing, and uses an oxygen tank. He states he often feels very dizzy and tired, has problems with his memory, and becomes confused. According to [REDACTED], he cannot take care of himself and his daughter, who lives in the same building one floor below him, takes care of him. He states that his other children cannot take care of him because they work and have their own families. [REDACTED] states that his daughter spends most of her time in his apartment cooking for him, cleaning, doing laundry, and giving him his medications. He contends that he cannot live without her, does not trust anyone else, and would be very depressed, lonely, and extremely heart-broken without her. Furthermore, [REDACTED] contends he cannot go to Iran with his daughter because he cannot fly due to his weak heart and he could not live in Iran considering the terrible things that have happened in Iran.

After a careful review of the entire record, the AAO finds that if the applicant's father decides to remain in the United States, he would suffer extreme hardship. A letter from [REDACTED] physician corroborates his contention that he has numerous medical problems and requires his daughter's assistance. The physician states that [REDACTED] has numerous disabling conditions that are progressive and very demanding, including: dementia, congestive heart failure, atrial fibrillation, a history of malnutrition and poor appetite, a history of gross hematuria with intermittent recurrence, hypertension, depression, and urinary incontinence. According to the physician, [REDACTED] takes ten different medications daily, is unable to perform many daily life activities, and relies on his daughter to care of him. The physician asserts that [REDACTED] becomes disoriented, is easily fatigued, was hospitalized for irregular, rapid heart beats and shortness of breath, and that any break in his relationship with his daughter would cause "catastrophic consequences." The record also contains a letter from the applicant's brother, explaining that [REDACTED] was separated from his daughter for several years and was depressed throughout their separation. According to the applicant's brother, [REDACTED] is completely dependent on his daughter, who cooks for him and bathes him, and he does not accept help from anyone else because he fears he will lose his daughter if he does not see her every day. The record further indicates that [REDACTED] is widowed and the AAO recognizes his strong attachment to, and reliance on, his daughter. Considering these unique circumstances cumulatively, the AAO finds that the hardship the applicant's father would experience if he remains in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if the applicant's father returned to Iran to be with his daughter, he would experience extreme hardship. As stated above, the record shows the applicant's father has been diagnosed with numerous, serious medical problems. The AAO acknowledges that relocating to Iran would disrupt the continuity of his health care. The AAO also recognizes the applicant's contention that her father has lived in the United States for over twenty years. [REDACTED] would need to readjust to living in Iran, a difficult situation made more complicated considering his advanced age and medical problems. Furthermore, the applicant has submitted documentation addressing country conditions in Iran and the AAO acknowledges that the U.S. Department of State has issued a Travel Warning urging U.S. citizens to carefully consider the risks of travel to Iran. *U.S. Department of State, Travel Warning, Iran*, dated May 24, 2013. Considering all of these factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if he returned to Iran to be with his daughter is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case includes the applicant's misrepresentation of a material fact to procure an immigration benefit. The favorable and mitigating factors in the present case include: the applicant's significant family ties to the United States, including her U.S. citizen father, two U.S. citizen siblings, and two siblings who are lawful permanent residents; the extreme hardship to the applicant's father if she were refused admission; and the applicant's lack of any arrests or criminal convictions. The AAO finds that, although the applicant's immigration violation is serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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 been met.

**ORDER:** The appeal is sustained.