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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: SEP 27 2013

Office: OAKLAND PARK

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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:
[REDACTED]

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Oakland Park, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant 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 having procured a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. Specifically, the applicant claimed that she was born in Cuba when she applied for adjustment of status under the Cuban Adjustment Act in 2006. In reality, the applicant was born in Peru and in a sworn statement, she admitted she had purchased a Cuban birth certificate for \$1000. See *Affidavit/Sworn Statement from* [REDACTED] dated May 22, 2007. The applicant does not contest this finding of inadmissibility. Rather, she 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 her U.S. citizen spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated September 28, 2012.

In support of the appeal, counsel for the applicant submits the following: a brief; affidavits from the applicant and her spouse; financial and employment documentation; support letters; medical records pertaining to the applicant's spouse's father and mother; and biographic documentation. The entire record was reviewed and considered in rendering this decision.

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.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), 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 (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 U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or her in-laws can be considered only insofar as it results in hardship to a qualifying relative. 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 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.

The applicant's U.S. citizen spouse asserts that he will experience extreme hardship were he to remain in the United States while his wife relocates abroad as a result of her inadmissibility. In a declaration, the applicant's spouse contends that he needs his wife to complete the family and his and his wife's well-being depends on their ability to be united. In addition, the applicant's spouse details that he is primary caregiver of his elderly parents who are very sick and live with them and were his wife to relocate abroad, he would not be able to properly care for them, thereby causing him hardship. He explains that he works at the [REDACTED] and his schedule is very flexible. He contends that all days are not the same because he could be working a whole full day or working mornings or evenings according to the events scheduled by the hotel and for this reason, his variable schedule has not allowed him to be with his parents on many occasions like their medical consultations and treatments. He maintains that his wife's assistance with his parents' needs has permitted him to perform well at work and provide the financial support the family needs. Knowing that his parents are being taken care of by his wife gives him the peace of mind he needs to function well. The applicant's spouse notes that although he has siblings, they have their own responsibilities and do not have the ability to care for their mother and father on a daily basis. *See Letter from* [REDACTED] *dated October 19, 2012.*

To begin, letters have been provided from the applicant's spouse's siblings outlining their parents' medical conditions, their inability to help their parents on a daily basis as a result of their own employment and familial obligations and maintaining that without the applicant's daily presence and support, their parents, and by extension, the applicant's spouse, will experience extreme hardship. As noted by [REDACTED] the applicant's spouse's brother, the applicant and his brother are the primary caretakers for his parents. He notes that his mother, currently in her 70s, needs dialysis three times a week for a three hour treatment that starts early in the morning and the applicant is the only person available to accompany their mother to treatment. Further, [REDACTED] maintains that his mother has lost her vision in both eyes and thus needs the applicant's daily assistance. *See Affidavit from* [REDACTED] *dated October 24, 2012.* The applicant's

spouse's sister, [REDACTED] echoes [REDACTED] statements regarding the applicant's role in her mother's and father's daily care. In addition, numerous letters have been provided from the applicant's and her spouse's friends outlining the hardships the applicant's spouse would experience were his wife to relocate abroad. Moreover, evidence that the applicant's spouse's parents reside with the applicant and her spouse and have been claimed as dependents on the applicant's and her spouse's tax returns has been provided. Extensive medical records have also been submitted by counsel outlining the applicant's in-laws' current medical prognosis. As noted, the applicant's mother-in-law was diagnosed with end-stage renal disease in late 2011 and needs dialysis three times a week and further, is losing her eye sight. She also has been diagnosed with hypertension, hypothyroidism and hypercholesterolemia. The record indicates that the he applicant's father, in his early 70s, also suffers from diabetes. Finally, evidence establishing that the applicant's spouse works full-time with a flexible schedule has been submitted. Were the applicant to relocate abroad, the applicant's spouse would become primary caregiver and provider to his elderly parents who are sick and need daily care and support and such a predicament would cause him hardship. The applicant's spouse needs the daily presence of his wife to ensure the continued care of his parents while he financially provides for the family.

With respect to relocating abroad, the applicant's spouse explains that his parents needs the best possible care and were they to accompany him abroad, they would experience hardship. *Supra* at 2. Further, counsel notes that the applicant's spouse was born in Mexico and has no ties to Peru. Counsel contends that the applicant's spouse would not be able to obtain gainful employment in Peru that would permit him to continue assisting his parents with respect to their daily care. See *Brief in Support of Appeal*, dated October 27, 2012. The record establishes that the applicant's U.S. citizen spouse was born in Mexico and has no ties to Peru. He is unfamiliar with the culture and customs of the country. In addition, the record establishes the applicant's spouse's extensive family ties in the United States, including the presence of his elderly parents and his siblings. Further, the record establishes that the applicant's spouse has been gainfully employed, since 2006, with The [REDACTED]. Were he to relocate abroad with the applicant, he would have to leave his home, his community, his friends, his long-term gainful employment and his extended family, including his elderly parents. It has thus been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen husband would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien 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).

See Matter of Mendez-Morales, 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 matter are the extreme hardship the applicant's U.S. citizen spouse and hardship her in-laws would face if the applicant were to relocate to Peru, regardless of whether they accompanied the applicant or stayed in the United States, the applicant's community ties, her gainful employment while in the United States, support letters, church membership, the payment of taxes and the apparent lack of a criminal record. The unfavorable factor in this matter is the applicant's attempt to obtain permanent residency in the United States by fraud or willful misrepresentation, as outlined in detail above.

The immigration violation committed by the applicant is serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factor. Therefore, a favorable exercise of the Secretary's 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.