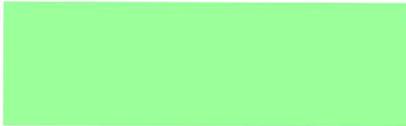




U.S. Citizenship
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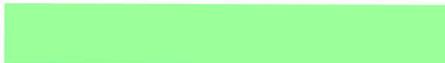


DATE: APR 18 2014 Office: SAN BERNARDINO, CA

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 (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, San Bernardino, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The AAO also affirmed its appeal decision in two subsequent motions. The matter is now before the AAO on a third motion. The motion is granted, the prior AAO decisions are withdrawn and the underlying appeal is sustained.

The applicant is a native and citizen of Nigeria 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 procuring admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to remain in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility accordingly. *Decision of Field Office Director*, August 25, 2009. The AAO dismissed a subsequent appeal, finding that the applicant's spouse would experience extreme hardship upon relocation to Nigeria but not if she remained in the United States without the applicant present. *AAO Decision*, dated February 15, 2012. The AAO affirmed its decision in two subsequent motions. *AAO Decisions on Motions*, dated April 22, 2013 and August 27, 2013. In its most recent decision, the AAO found that the record did not establish the nature and severity of the applicant's spouse's medical condition and lacked a description of necessary treatment and family assistance. The AAO found that the applicant's hardship factors, in the aggregate, did not meet the extreme hardship standard.

On motion, the applicant's spouse details her medical issues and submits a letter from her physician.

The record includes, but is not limited to, medical records; financial records; statements from the applicant, his spouse and family members; copies of income-tax returns; evidence of birth, marriage, divorce, residence, and citizenship; articles about country-conditions in Nigeria; other immigration applications and petitions; and photographs. The entire record was reviewed and considered in rendering a decision on the motion.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) 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 USCIS policy; and (2) 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).

Based on the evidence submitted with this motion, which includes new facts, the requirements of a motion to reopen have been met.

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 Secretary of the 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.

The record reflects that in 1999 the applicant presented a French passport that did not belong to him to procure admission to the United States under the Visa Waiver Program. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or willful misrepresentation. The applicant does not contest his inadmissibility.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bars imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not considered in section 212(i) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (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 (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 demonstrated on appeal that his spouse would experience extreme hardship upon relocation to Nigeria. The record contains no evidence indicating this finding should be overturned. The AAO therefore affirms that the applicant has provided sufficient evidence establishing his spouse would experience extreme hardship in the event of relocation.

Addressing the hardship she would experience if she were to remain in the United States without the applicant, the applicant's spouse states that she has endometriosis, which can lead to pain, irregular bleeding and infertility; in 2006 a mass was discovered on her lower left abdomen and it led to this diagnosis; after surgery in 2007, her symptoms were relieved for six months; she frequently has visited emergency rooms with pain since then; she was diagnosed with walking pneumonia in November 2011, a side effect from birth-control medicine; she had a bowel obstruction from her endometriosis in June 2012 that resulted in surgery; she has missed school and work numerous times due to her endometriosis; she was in the emergency room in July 10, 2013 with lower abdominal pain; and her physician has provided an letter related to her medical condition. The applicant's spouse's physician states that her diagnosis is stage IV endometriosis; as a result "she often has pain and requires treatment in the emergency department"; and she had a small bowel obstruction in 2009 related to her condition. The record includes hospital discharge instructions from June 2012. The notes indicate at the time she was diagnosed with "abdominal pain" and advised to seek pain-management options with her physician; the medical instructions section of these notes includes an explanation of endometriosis, its symptoms and treatment.

The applicant's spouse states that her condition causes her such severe emotional and physical pain that she needs the applicant to take care of her when she has an episode. The spouse explains she experiences severe pains twice each month, and that every time the pain lasts for five to seven days. She states that the applicant is the only person who lives with her, and when she experiences this pain, he helps with daily tasks at home, takes her to the hospital and doctor's appointments, prepares food, and comforts her emotionally. The applicant's spouse claims she is unable to take herself to medical appointments when she is in pain, and she sometimes she is bedridden.

The applicant's spouse states that the applicant has supported her emotionally, physically and financially when she was sick and in the hospital; her family would not stay with her when she is sick; and he is her closest family and the only person she can count on. She states that she would be emotionally devastated without him. The record includes several statements from the applicant's spouse describing her close relationship with the applicant. The applicant's spouse also describes emotional hardship related to the applicant's sickle cell anemia. She would worry about his condition and treatment if he were in Nigeria, which is "not a place [she] could drive to" if his condition worsened.

The applicant's prior counsel asserts that the applicant's spouse also would experience psychological damage without the applicant, because she wants to start a family and she would be separated from her life partner. The record reflects the applicant's spouse has had infertility treatment.

Moreover, the applicant's spouse states that she would experience financial hardship without the applicant. The record includes mortgage statements and past due bills from 2008 for the applicant and his spouse.

The record reflects that the applicant's spouse is very close to the applicant and they have been married nearly nine years. They have undergone infertility treatment without success and emotional hardship upon separation thus likely would be intensified because of this issue. She has provided sufficient documentation of a serious and incapacitating medical condition that has caused her difficulty over a period of several years, and the record reflects that the applicant plays a significant supportive role in helping her manage her condition. The documentary evidence related to financial hardship is not current. Therefore, it will be given minimal weight. However, based on the totality of the other hardship factors presented, the AAO finds that the applicant's spouse would experience extreme hardship if she remained in the United States without the applicant.

Considered in the aggregate, the applicant has established that his spouse would face extreme hardship if the applicant's waiver request is denied.

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.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez 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 (citation omitted).

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 section 212(h)(1)(B) 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 include the applicant's U.S. citizen spouse, extreme hardship to his spouse, his lack of a criminal record, and evidence of his good moral character. The unfavorable factors include the applicant's misrepresentation, his period of unauthorized period of stay and his unauthorized employment.

The AAO finds that 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 motion is granted, the prior AAO decisions are withdrawn and the underlying appeal is sustained.