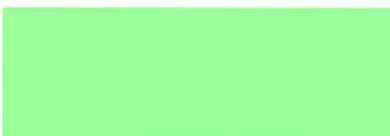




U.S. Citizenship  
and Immigration  
Services

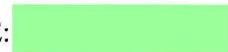
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Date: AUG 01 2014

Office: ST. PAUL FIELD OFFICE

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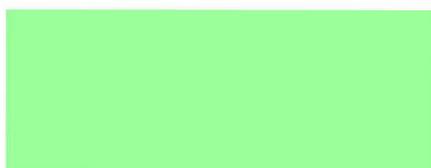
Applicant:



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:



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 St. Paul Field Office Director, Bloomington, Minnesota, 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 Togo, who 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 procuring admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse.

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 1, 2013.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that the applicant has provided sufficient evidence that her spouse would suffer extreme hardship as a consequence of her waiver not being granted. Counsel asserts that the spouse would suffer mental, psychological, and financial hardship as a result of the applicant's inadmissibility, and that there is new evidence to show the hardship that the spouse would suffer. With the appeal counsel submits a brief, medical information for the applicant and the applicant's spouse, educational information for the applicant's son, a report about Sickle Cell Anemia, a report on parental stress and autism disorders, a news report about child care costs, and country information for Togo. The record also contains financial documentation, employment information for the applicant's spouse, previously-submitted medical and country information, and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). 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 that:

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 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 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.

The record reflects that when the applicant applied for an F-1 student visa in November 2008 she indicated that she was single, never married, when in fact she had been married to her current spouse since July 2007. Neither counsel nor the applicant has contested the inadmissibility finding.

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 spouse is the only qualifying relative 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-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. *Salcido-Salcido v. INS*, 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.

In his brief counsel notes that the applicant was diagnosed with Sickle Cell Disease in 2009, and though not curable, there is treatment available in the United States to minimize symptoms and future health problems. Counsel also notes that the applicant's son was diagnosed with Alpha Thalassemia Hb C Disease, a blood disorder, and has now also been diagnosed with autism spectrum disorder. Counsel cites a report from the son's teacher and asserts that the applicant's spouse would face profound stress in coping with his son's disorder as a single parent without the applicant. Counsel also asserts that without the applicant her spouse would face financial hardship supporting two households while attending to medical expenses.

In his affidavit the applicant's spouse states that without the applicant here he would face unusual financial hardship in light of his son's special needs while maintaining a house in the United States and in Togo for the applicant. He states that he has three jobs to provide for his family and sends \$400 a month to his mother in Togo for her and his twin daughters who live with her. The spouse states that the applicant stays at home to care for their two children to eliminate childcare costs. He asserts that his son's special needs and behavioral issues preclude normal day care, and that without the applicant here he could not spend as many hours on two or three jobs to support two households and provide care for their children.

Medical documentation submitted to the record shows that the applicant's son was diagnosed with Alpha Thalassemia Hb C disease, which reports describe as a blood disorder that reduces the ability of the body to carry oxygen. The reports describe the effects as including anemia, enlarged liver and spleen, heart defects, and urinary system problems. Documentation submitted to the record shows that the applicant's son also suffers from autism. A report from the son's school states that he needs direct instruction to increase his ability to understand and that he is unable to engage in group activity. The report notes that the son has delays in development and needs an intensive educational setting, a low student-teacher ratio, and an occupational therapist. According to the report the son requires curb-to-curb transportation and hand-to-hand transfer and has aggressive actions, including

tantrums, running away, biting, and jumping off tables. It further notes that as he is not aware of general safety he needs constant supervision at home.

Medical documentation submitted to the record shows that the applicant has been diagnosed with Sickle Cell Disease, with reports showing that common symptoms include fever, swelling, chest and abdomen pain, fatigue, and anemia, while a patient would also be susceptible to infections as a damaged spleen would be unable to protect the body from bacteria. Reports note that a person can develop kidney and liver problems, gallbladder disease, and bone and joint problems. Reports also indicate that although there is no proven prevention, managing problems can help patients live longer and have a better quality of life.

The spouse states that he has become depressed and has been prescribed medication. A letter from the spouse's doctor states that the spouse shows symptoms of depression and anxiety with difficulty sleeping as a result of the prospect of the applicant's forced departure from the United States. Medical documentation shows that the spouse has been prescribed medication for headaches and depression and has been referred to a behavioral health team.

Having reviewed evidence submitted to the record, we find it to establish that the applicant's spouse would experience extreme hardship resulting from his separation from the applicant. The record establishes that the applicant's son has severe medical and educational needs requiring attention that, without the applicant's presence, would be difficult for the spouse to provide. The record shows that the spouse has three jobs to support his family and meet his financial responsibilities and would likely be unable to do so without the applicant to provide care for their son. Given the applicant's medical issues, the spouse would also have the additional stress of worrying about her health and safety if she were in Togo where, according to the Department of State Bureau of Consular Affairs, medical facilities are limited and of very poor quality and medical care is substandard throughout the country, including in major cities. The report also states that patients may encounter shortages of routine medications and supplies and counterfeit medications are a frequent problem. *U.S. Department of State Bureau of Consular Affairs - Togo*, April 3, 2014. The Bureau of Consular Affairs also notes that Togo has seen high levels of violent crime throughout the country. Thus the cumulative effect of separation from the applicant rises to the level of extreme hardship for the applicant's spouse.

We also find the record to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Togo to reside with the applicant. Counsel states that the applicant's spouse fled Togo in 2001, never returning to Togo. The spouse states that he has been granted asylum in the United States and believes he would not be safe returning to Togo. Counsel submitted human rights reports for Togo that show continued abuses such as arbitrary arrests and excessive use of force and torture, and that police and judicial corruption are endemic. According to the U.S. Department of State Country Reports on Human Rights Practices for 2013, the main human rights problems included life-threatening prison conditions, official corruption and impunity. It noted other human rights abuses included executive influence over the judiciary, restrictions on freedom of press and assembly, violence and discrimination against women, child abuse, and trafficking in persons. It also noted official and societal discrimination persisted against persons with disabilities.

The applicant's spouse states that in Togo he would have no access to insurance or health care, would be concerned about his ability to pay for medical care, and would feel the pain of having removed his wife and son from superior medical care and attention in the United States for risks in Togo.

Were the applicant's spouse to relocate to Togo to reside with the applicant, he would be concerned about his own safety as well as that of the applicant and their children. As mentioned above, the Department of State Bureau of Consular Affairs notes high levels of violent crime throughout Togo and states that medical facilities are of very poor quality, while patients may encounter shortages of routine medications and supplies in addition to counterfeit medications. The spouse would thus be concerned about the health of his family, given their medical conditions and the inadequacy of health care in Togo, and the disabilities of his son while also being concerned about financially supporting his family.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, we find that the circumstances presented in this application rise to the level of extreme hardship.

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 hardships the applicant's United States citizen spouse and children would face if the applicant is not granted this waiver and her apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's misrepresentation to enter the United States.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. 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 appeal is sustained.