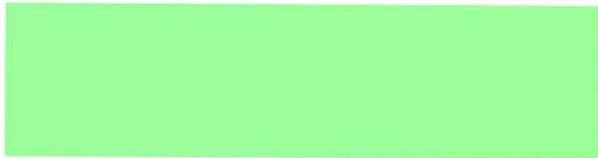




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: FEB 21 2014 Office: PANAMA CITY, PANAMA

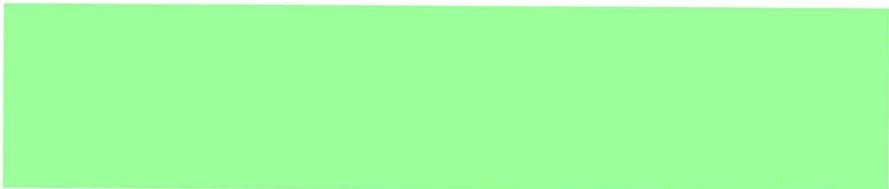


IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i); Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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 waiver application was denied by the Field Office Director, Panama City, Panama. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted, the prior AAO decision is withdrawn and the underlying appeal is sustained.

The applicant is a native and citizen of Guyana who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission to the United States through fraud or misrepresentation. In addition, the applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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. The applicant does not contest the findings of inadmissibility, but rather seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), and under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his U.S. citizen wife and children.

The applicant was removed from the United States on March 15, 2007, and also seeks permission to reapply for admission after removal pursuant to section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated July 20, 2012. In the same decision, the field office director denied the applicant's Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212).

The AAO, reviewing the applicant's Form I-601 on appeal, concurred with the field office director that extreme hardship to a qualifying relative had not been established and dismissed the appeal. *Decision of the AAO*, dated April 5, 2013.

On motion, filed on May 2, 2013 and received by the AAO on November 26, 2013, counsel submits additional evidence of hardship to the applicant's spouse if the waiver application is not approved and medical documentation concerning the applicant's father.

On the Form I-290B, Notice of Appeal or Motion (Form I-290B), counsel indicates that the applicant is filing a motion to reconsider the AAO's decision to dismiss the appeal. According to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must 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 Service policy. Counsel fails to state reasons for reconsideration supported by pertinent precedent decisions. According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. As the applicant has submitted new documentary evidence to support his claim, a motion to reopen will be granted.

The record includes, but is not limited to, the following documentation: briefs by applicant's counsel in support of Forms I-290B; statements by the applicant's spouse, mother, and mother-in-law;

psychological evaluations for the applicant's spouse and children; financial documentation; medical documentation for the applicant and his father; photographs; and country-conditions information about Guyana. The entire record was reviewed and considered in rendering a decision on the motion.

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.

On June 27, 2001, the applicant arrived at Miami International Airport and presented himself as a Transit Without Visa (TWOV) passenger en route from Guyana to Panama. He admitted to U.S. immigration authorities that he had used the TWOV program to travel to the United States to request asylum. The applicant was found inadmissible for misrepresentation of a material fact in seeking to enter the United States. The applicant does not contest this finding of inadmissibility.

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

The Attorney General [now the Secretary 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.

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

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.

Upon arriving in the United States on June 27, 2001, the applicant applied for asylum. His applications for asylum and withholding of removal were denied, and the applicant was ordered removed on November 18, 2002. The applicant's appeal to the Board of Immigration Appeals was dismissed on August 30, 2004. The applicant was removed from the United States on March 15,

2007. Thus the applicant accrued unlawful presence in the United States from August 30, 2004 until March 15, 2007, a period of more than one year. The applicant does not contest this finding of inadmissibility.

(v) Waiver. – The [Secretary] 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 [Secretary] 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.

A waiver of inadmissibility under section 212(i) of the Act and under section 212(a)(9)(B)(v) 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse and the applicant's parents are the only qualifying relatives in this case. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, U.S. Citizenship and Immigration Services (USCIS) does consider a child's hardship a factor in determining whether a qualifying relative experiences extreme hardship. 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-Moralez*, 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. INS*, 138 F.3d 1292, 1293 (9th Cir. 1993), (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.

Counsel contends that the applicant’s spouse is suffering emotional hardship due to her separation from the applicant. With his appeal the applicant had submitted a letter from a psychotherapist indicating that the applicant’s spouse suffers from disturbed sleeping and nagging repetitive thoughts about her future without him and noting this could negatively impact their children’s development. The letter indicates that the applicant’s spouse is suffering from depressive anxieties. On motion, counsel submits a recent detailed psychological evaluation for the applicant’s spouse, indicating that she is experiencing severe depression and anxiety and that continued separation from the applicant will cause her to “likely continue experiencing significant psychological symptoms impacting her wellbeing.” The psychologist recommends the applicant’s spouse undergo therapeutic treatment.

The psychologist also evaluated the applicant’s two children and concluded that they have been tremendously affected by the applicant’s absence. As stated above, under sections 212(a)(9)(B)(v) and 212(i) of the Act, children are not deemed to be qualifying relatives, and their hardship will be considered only to the extent it affects a qualifying relative. In this particular case, the psychological evaluation indicates that both children are showing signs of emotional difficulties related to the applicant’s absence and that their emotional difficulties would greatly affect the applicant’s spouse’s own emotional and mental state. The record therefore supports finding that the applicant’s spouse is experiencing hardship related to the hardship of their children caused by the applicant’s inadmissibility.

In addition, the record includes a report from the [REDACTED], which states that the applicant has been diagnosed with depression and has been receiving treatment for the past three years in the form of medication and psychotherapy. Although hardship to the applicant may be considered only insofar as it results in hardship to a qualifying relative, the psychological evaluation of the applicant's spouse indicates that she is experiencing hardship related to her concern about him and his ability to cope with his depression.

Counsel further contends that the applicant's spouse is experiencing severe financial difficulty since the applicant was removed from the United States. The record indicates that the applicant's spouse is employed at a bank and receives an annual salary of \$20,800. The applicant's spouse states that, due to her responsibilities as a single parent, she was forced to take a demotion in August 2011. The record includes copies of federal income tax returns, indicating an adjusted gross income of \$20,686 for 2011 and \$18,457 for 2010. Counsel submits a copy of a personal monthly budget for the applicant's spouse, indicating that the applicant's net monthly income is \$1,501.50. The personal monthly budget report indicates that the applicant's spouse's monthly expenses total \$3,499, or \$1,997.50 more than her monthly income. The record includes documentation indicating that the applicant's spouse currently receives food stamps and home energy assistance program benefits from state assistance programs to help her provide for her family. The applicant's spouse states that she is struggling to support the family, and her psychological evaluation shows she claims that assistance from family members is limited. The applicant's spouse also states that she cannot afford frequent travel to Guyana to visit the applicant and that she and the applicant must limit their phone calls to one per week because phone calls to Guyana are expensive. The evidence in the record supports finding that the applicant's spouse is suffering hardship in meeting her financial obligations without him and that her financial concerns restrict her ability to maintain their relationship during their separation.

The record establishes that the applicant's spouse is experiencing psychological and financial hardship as a result of her separation from the applicant, as well as hardship caused by the emotional hardship of their children and the applicant himself. These hardships, when considered in the aggregate, are beyond the common results of removal and rise to the level of extreme hardship if she remains in the United States without the applicant.

Concerning the hardship she would experience if she were to relocate to Guyana, the applicant's spouse states that all her relatives reside permanently in the United States, including her U.S. citizen parents, grandparents, siblings, and other family members. Additionally, the applicant's parents and brother are U.S. citizens residing in the United States. The applicant has established that his spouse has strong family ties in the United States.

The applicant's spouse also states that she and their children would suffer medical and health hardships if they were to relocate to Guyana to reside with the applicant. The applicant notes that on a visit to Guyana, their children fell ill due to mosquito bites and bites from sand flies, which have left scars. She also is concerned about the lack of safe drinking water in Guyana. The record includes a State Department report, which states that medical care in Guyana does not meet U.S. standards, and although care is available for minor conditions, the quality is very inconsistent. Emergency care and hospitalization for major medical illnesses or surgery are very limited due to a

lack of appropriately trained specialists, below standard hospital care, and poor sanitation. The State Department report also indicates that the water supply system throughout Guyana is considered contaminated.

The applicant's spouse additionally states that she fears for her safety and that of their children if they were to relocate to Guyana. The applicant's spouse claims that the applicant's house was robbed twice; clothing, jewelry, and household items were stolen. The applicant's spouse believes that the applicant was targeted because the thieves knew that he once resided in the United States and that his relatives live there. Although the State Department reports that foreigners are not specifically targeted, the report notes that "[f]oreigners in general are viewed as targets of opportunity." The country-conditions reports also indicate that serious crime, including murder and armed robbery, is a major problem, with a murder rate three times higher than that in the United States.

In addition, the applicant's spouse states that it would be difficult to find employment in Guyana due to the country's high unemployment rate. According to the CIA Factbook, Guyana's unemployment rate is 11%.

Moreover, the applicant's spouse is concerned about the hardships that their children would experience, claiming they would not receive a good education in Guyana and would find adapting to Guyanese school life difficult.

The record supports finding that the applicant's spouse would experience extreme hardship were she to relocate to Guyana. Although she was born in Guyana and is familiar with the language and cultures of Guyana, she has lived in the United States for approximately ten years and is a U.S. citizen. The hardships to the applicant's spouse include the strong family ties she has in the United States, the concerns she has for herself and their children about medical and safety issues in Guyana, and the economic concerns and concerns for the education of their children. The AAO finds these hardships, in the aggregate, rise to the level of extreme hardship. The applicant has established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Guyana to reside with him.

The applicant also contends that his father, another qualifying relative under the Act, is suffering from a heart ailment and submits medical documentation to support his contention. However, as the AAO finds that the applicant's spouse will suffer extreme hardship if the applicant's waiver is not approved, the AAO will not consider the evidence of hardship to the applicant's father in this matter.

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-Moralez*, 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 hardships to his U.S. citizen spouse; the hardship to their two U.S. citizen children; the strong family ties that the applicant's spouse has in the United States; and a letter of reference written on behalf of the applicant. The unfavorable factors in this matter are the applicant's attempt to enter the United States unlawfully and unlawful presence in the United States, and a conviction in 2003 for driving while intoxicated.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Moreover, although the applicant was convicted for driving while intoxicated, his violation occurred more than ten years ago and the record reflects no arrests since that time. The AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

The AAO notes that the field office director denied the applicant's Form I-212 in the same decision. The Form I-212 was denied solely based on the denial of the Form I-601. As the AAO has now found the applicant eligible for a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, it will withdraw the field office director's decision on the Form I-212 and render a new decision.

Section 212(a)(9)(A) of the Act states:

Aliens previously removed.-

(A) Certain aliens previously removed.-

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the [Secretary] has consented to the aliens' reapplying for admission.

On March 15, 2007 the applicant was removed from the United States. As such, he is inadmissible under section 212(a)(9)(A) of the Act and must request permission to reapply for admission.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. The AAO has found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated in that finding, the AAO finds that the applicant's appeal on the denial of the Form I-212 should also be sustained 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 been met.

ORDER: The motion to reopen is granted, the prior AAO decision is withdrawn and the underlying appeal is sustained.