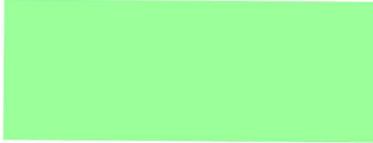




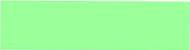
U.S. Citizenship
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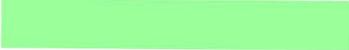


Date: JUL 15 2014

Office: NEW YORK, NEW YORK

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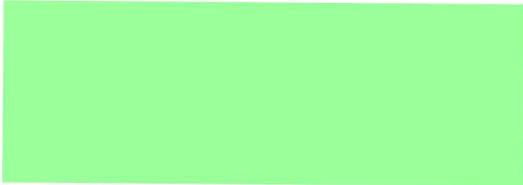
IN RE:

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:



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, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting District Director, New York, New York, 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 a citizen of El Salvador who presented a fraudulent passport in an effort to obtain entry to the United States. The applicant 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).¹ The applicant is the wife of a U.S. citizen and has two U.S. citizen children and five U.S. citizen grandchildren. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Acting District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on November 22, 2013.

On appeal, counsel for the applicant asserts that USCIS failed to consider all of the facts in this matter and improperly relied on facts that were not presented. Counsel asserts that the applicant's spouse has serious medical conditions and states in her brief that the record established a qualifying relative will experience extreme hardship.

The record contains, but is not limited to, the following documentary submissions: statements from counsel for the applicant; statements from the applicant, her spouse and their family members; tax returns for the applicant and her spouse; country conditions information on El Salvador; copies of prescription labels for the applicant's spouse; medical records related to the applicant's spouse; and documents filed in relation to the applicant's Form I-485.

Section 212(a)(6)(C) of the Act states, in pertinent part:

- (i) 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 chapter is inadmissible.

¹ In a separate decision the Acting District Director denied the applicant's Form I-485, Application for Adjustment of Status (Form I-485). The director found that the applicant was ineligible to adjust status because she had reentered the United States without inspection after removal and was therefore inadmissible under section 212(a)(9)(C)(i)(II) of the Act and could not apply for permission to reenter the United States until she had been outside the United States for 10 years. The record contains no documentation to establish that the applicant was actually removed from the United States as a result of her presentation of a fraudulent passport, rather than allowed to withdraw her request for admission. However, if it is determined that the applicant was removed, as the applicant's removal and reentry were prior to enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) she would not be inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

The record indicates that the applicant attempted to enter the United States in 1979 with a fraudulent passport. The Acting Field Office Director noted in her decision dated her November 22, 2013, decision that the applicant had failed to reveal an arrest on her Form I-485 or at her I-485 adjustment interview. Counsel for the applicant asserts that the applicant was confused and nervous at her interview which is why she failed to reveal her prior arrest. The applicant admits that she attempted to enter the United States with a fraudulent passport, and as such, she is inadmissible pursuant to section 212(a)(6)(C)(i) for attempting to enter the United States with a fraudulent passport.

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

- (1) The Attorney General may, in the discretion of the Attorney General, 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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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. Hardship to an applicant or their children can be considered only insofar as it results in hardship to a qualifying relative. 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-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*, 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.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Counsel for the applicant asserts that U.S.C.I.S. failed to consider all the facts of the applicant's case. She explains that the applicant is 62 years old, a native of El Salvador, has lived in the United States for most of her adult life, and received Temporary Protected Status in 2001 after a hurricane devastated El Salvador. She further explains that the applicant and her spouse have three children together and five grandchildren, and that the applicant's spouse has a number of serious medical conditions, including Benign Prostatic Hypertrophy, Liver Cirrhosis, Depression, Diabetes Mellitus, Hypertension and Hyperlipidemia. Counsel states that the applicant is the one who helps her

spouse get dressed everyday, helps him take his medications and eat a proper diet, and further asserts that removing the applicant to El Salvador would have be an emotional hardship for the applicant's spouse due to the difficulties he would experience due to his age and medical condition.

The applicant's spouse has submitted a letter outlining the hardships he will experience if the applicant is removed. He notes that they have three children and five grand children together, that he has medical conditions which she helps him keep under control, and that all of his family now lives in the United States. He explains that he would have problems finding employment in El Salvador due to his age and the conditions that exist there. He further states that the applicant has had the same job for the last 20 years, and has been a stablizing influence on his life.

The record contains a number of medical documents and exam results related to the applicant's spouse. A letter from the applicant's spouse's doctor states that he suffers from multiple medical problems, in cluding liver cirrhosis, depression, diabetes mellitus, hypertension and lipidemia. Other documentation in the record includes prescription notices, discharge records and visitation reports which indicate the applicant's spouse has been presribed several medications to treat his conditions. Based on this evidence, the record establishes that the applicant's spouse has a number of serious medical conditions.

The record also reflects that the applicant and her spouse have been married since 1996, and had been together for a number of years before that. The applicant's spouse has attested to the physical and emotional assistance the applicant provides him on a daily basis, such as assisting him with his diet, doctor's appointments and taking his medications. The record supports that if the applicant's spouse had to sever such a long-term relationship due to his wife's removal he would experience emotional hardship, in addition to the emotional hardship it would have on the applicant's spouse if their children were separated from the applicant due to her removal.

On March 9, 2001, El Salvador was designated by the Attorney General for Temporary Protected Status due to the devastation in the country after a hurricane. The status was extended through March 9, 2015. 78 Fed. Reg. § 32418, May 30, 2013. Three severe earthquakes in January and February 2001 resulted in the loss of over 1,000 lives, approximately 8,000 people injured, many thousands more displaced, extensive damage to physical infrastructure and severe damage to the country's economic system. A Department of State, Bureau of Consular Affairs Travel Warning, updated on April 25, 2014, indicates that crime is a serious problem throughout El Salvador and that the murder rate has been rising since 2013. Based on these findings, the record indicates that the applicant's spouse and family members would experience an uncommon emotional hardship if the applicant, who is 64 years old, were removed there, because of his age, medical conditions and the difficulties he would have under El Salvador's strained economic and environmental conditions.

When these hardships are examined in the aggregate, the record demonstrates that they rise to extreme hardship.

With regard to hardship upon relocation, the record reflects that the applicant is a native of El Salvador, where she and her spouse would have to relocate to if she is removed. As noted above, the conditions in El Salvador are such that having to relocate there would present uncommon physical

and economic difficulties. Given the applicant's spouse's medical conditions, it would also present an unusual physical hardship for him to discontinue his medical treatment in the United States and attempt to re-establish appropriate medical care in El Salvador. The record contains statements from friends and family members of the applicant attesting to the fact that the applicant's spouse's family resides in the United States now, and that having to relocate would separate the applicant's spouse from his children and grandchildren, and his mother and sisters. The applicant's spouse has resided in the United States since 1978 and would experience hardships from having to re-establish himself in El Salvador after his long-term U.S. residence. When these hardships are considered in the aggregate, the record reflects that the applicant's spouse would experience extreme hardship upon relocation.

As the applicant has established extreme hardship to a qualifying relative, we may now move to determine whether the applicant warrants a waiver as a matter of discretion. 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 section 212(h)(1)(B) 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 AAO finds that the unfavorable factors in this case include the applicant's misrepresentation, her entry without inspection, and periods of unauthorized presence. The favorable factors in this case include the presence of the applicant's spouse, the presence of her U.S. citizen children and grandchildren, the extreme hardship her spouse would experience if she were removed, her stable work history in the United States, letters of support from family and friends, and the lack of any criminal record for the applicant during her residence in 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 his burden and the appeal will be sustained.

ORDER: The appeal is sustained.