



U.S. Citizenship
and Immigration
Services

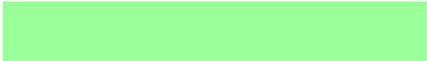
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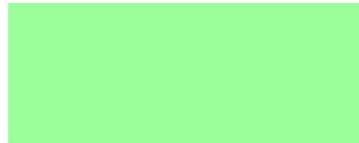
Office: TAMPA FIELD OFFICE

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:



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 Field Office Director, Tampa, Florida, 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 Cuba 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 attempting to procure 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 lawful permanent resident 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 October 21, 2013.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that USCIS erred by not finding the qualifying spouse would suffer extreme hardship as a consequence of the applicant's inadmissibility. With the appeal counsel submits a brief, country information for Cuba, a statement from the spouse's physician, information about diabetes, and a psychological evaluation of the applicant's spouse. The record contains statements from the applicant and her spouse, medical documentation, financial documentation, and letters of support from family. 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 the applicant was the beneficiary of an approved Petition for Alien Petition for Alien Fiancé(e) (Form I-129F) in 2006 and applied for a visa to the United States as a fiancé. However it was determined by the U.S. Consulate in Havana that the relationship did not exist and in 2010 the consulate returned the petition to USCIS recommending it be revoked.

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-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. *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.

On appeal counsel asserts that due to his age the applicant's spouse relies on the applicant for physical support, including cooking and shopping, and that without her he would need to rely on his children. The spouse states that because of his diabetes and open heart surgery he has a strict diet and that the applicant is in charge of his medication and food. The spouse further states that food stamps are received in the applicant's name rather than his, but that he does receive Medicaid. Medical records show that the spouse was given medications and indicates that he had bypass surgery in 2006. A letter from the spouse's primary care physician states that the applicant's spouse is being treated for hypertension, diabetes with neuropathy, osteoarthritis, coronary artery disease, and memory loss, and that he needs assistance with remembering to take medications and to administer insulin injections. The physician states that the assistance provided by the applicant benefits her spouse's health.

The applicant's spouse states that he cannot emotionally handle the applicant departing as she is his life partner, and medical documentation notes that the spouse reported emotional stress over the applicant's immigration issues. A psychological evaluation of the spouse states that he reports that the applicant gives him insulin injections as he does not know how, and that she makes sure he takes medication and eats right. The evaluation refers to the spouse as a medically compromised man who depends entirely upon the applicant for his survival. The evaluation states that the applicant is the source of strength for her spouse and it emphasizes there is a fundamental importance of attachment for the elderly. It further states that the spouse depends on the applicant for everything emotionally and physically and that she gives him a sense of purpose and hope. It also asserts that if the applicant were in Cuba her spouse would worry about her welfare as he has lived under the regime there.

Counsel indicates that the applicant provides financially for her spouse through her employment and public assistance that is in her name rather than that of her spouse. The applicant's spouse states that it is difficult to find work as a carpenter at his age and that he and the applicant are living with the applicant's daughter who has also helped them financially. Financial documentation submitted to the record includes the applicant's W-2, a letter of employment verification from her employer, jointly-filed taxes, auto insurance, bank statements, and Medicaid information for the applicant's spouse.

We find that the record establishes the applicant's spouse would experience extreme hardship as a result of his separation from the applicant. In reaching this conclusion, we note the spouse's medical and emotional condition as well as his financial status. The record reflects that the applicant's spouse has numerous medical conditions for which he relies on the applicant for physical and emotional support. Further, given the spouse's age and health issues he would also suffer financial hardship without the applicant's presence in the United States.

Regarding hardship if the applicant's spouse were to relocate to Cuba, counsel asserts that the family of the spouse escaped from Cuba, putting the spouse on a blacklist. In his statement the spouse recalls difficulty for family members with the government in Cuba and that after his son escaped he was questioned by authorities. The spouse states that he fears returnees to Cuba are sent to reeducation camps. Counsel further asserts that the spouse has no family support network in Cuba, has medical conditions, and at his age would be unable to find employment. The spouse states that he has diabetes and a heart condition, letters from the spouse's physician identifies diagnoses, and medical documentation shows use of prescribed medications and a prior bypass surgery.

The record establishes that the applicant's spouse would experience extreme hardship if he were to relocate to Cuba. The applicant's spouse left Cuba after other family members had fled and has no support network there now. Further, given the spouse's age and health condition, he would be concerned about financial support and medical care in Cuba. According to the U.S. Department of State, Cuba continues to be a repressive regime and visiting U.S. citizens are warned that any activities could be subject to surveillance and contacts with Cuban citizens are monitored closely. It states that human rights conditions in Cuba remain poor as the government limits fundamental freedoms. It further notes that medical care does not meet U.S. standards, that many health facilities face shortages of medical supplies, and that many medications are unavailable, so travelers should bring any prescribed medicine. We therefore find that the applicant's spouse would experience extreme hardship if he were to relocate to Cuba.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 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-Morales*, 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 spouse and children would face if the applicant is not granted this waiver; the applicant's support from her spouse, family and friends in the United States; her gainful employment and payment of taxes; and apparent lack of a criminal record. The unfavorable factor in this matter is the applicant's entry to the United States through misrepresentation.

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.