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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: MAY 08 2014

Office: BALTIMORE, MD

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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 that reads "Ron Rosenberg".

Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland, 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 Trinidad who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant established extreme hardship to his wife, particularly considering her very serious mental health issues. Counsel submits additional evidence of hardship.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED] indicating they were married on July 27, 1991; an affidavit from the applicant; a declaration from Ms. [REDACTED] two psychological evaluations; a letter from Ms. [REDACTED]'s physician and copies of medical records; a letter from the applicant's employer; a letter from the applicant's sister; copies of tax returns and other financial documents; letters from debt collectors; letters of support; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

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 Act is inadmissible.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, the record shows, and the applicant concedes in his affidavit, that in January 1991, he attempted to enter the United States using a false Canadian birth certificate and was parolled into the

United States. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's wife, Ms. [REDACTED] states that she and her husband have been married for over twenty years. She states that although she worked for more than twenty years as a manager at [REDACTED], she is currently unemployed because of long-time health problems and emotional distress. According to Ms. [REDACTED] she has suffered from repeated ovarian cysts for which she has had more than ten surgeries since 1992 and, as a result, has had eight miscarriages. In addition, she states she has an enlarged gall bladder and pancreas, and suffers from high blood pressure, severe bronchitis, and sinus problems. Furthermore, she states she suffers from depression and emotional problems connected with her childhood. Ms. [REDACTED] contends her husband has been her very best friend and soul mate for the past twenty years. She states she does not have many close friends or relatives and that he is her main source of emotional security. She contends her mental condition would deteriorate within days of her husband leaving and she would not be able to survive. In addition, she claims he is now her sole source of financial security, that he helps pay for some of her mother's living expenses, and that they help care for her fourteen-year old niece who is currently in remission from leukemia and lives with them part-time because Ms. [REDACTED]'s sister abuses drugs. Furthermore, Ms. [REDACTED] contends she cannot relocate to Trinidad to be with her husband because she has never visited Trinidad, does not know anything about it, and does not know anyone who lives there. Additionally, she states she has heard there is high unemployment and a lot of crime in Trinidad.

After a careful review of the entire record, the AAO finds that if the applicant's wife, Ms. [REDACTED] relocated to Trinidad to be with her husband, she would experience extreme hardship. The record contains two psychological evaluations describing in detail the extreme sexual, physical, and emotional abuse Ms. [REDACTED] endured as a child by her two alcoholic parents and others. In addition, Ms. [REDACTED] was reportedly attacked multiple times while in school and she attempted suicide twice. According to the psychologist, Ms. [REDACTED] has a history of self-mutilation, most recently in the last year. The psychologist states Ms. [REDACTED] is agoraphobic, gets panic attacks, and has no friends. She reportedly takes an antidepressant and suffers from flashbacks of the multiple instances of child sexual abuse she suffered. The psychologist diagnosed her with Posttraumatic Stress Disorder, Agoraphobia with associated panic attacks, and Major Depressive Disorder. The psychologist describes Ms. [REDACTED]'s psychological state as "a chronic debilitating emotional condition" and confirms that her physical as well as emotional problems have now combined to the point where she is unable to work. According to the psychologist, due to the trauma she has suffered, Ms. [REDACTED] fears and avoids change in general, and having to adjust to a completely new culture and lifestyle would involve severe mental stress, as would staying in the United States without her husband. The psychologist emphasizes that Ms. [REDACTED]'s husband is her protector and her source of security, contends that her history of self-mutilation indicates a heightened risk for suicide, and states that she is at high risk for a complete psychological breakdown involving psychosis and the need for hospitalization. In addition to Ms. [REDACTED]'s severe psychological problems, documentation in the record also shows she has several ongoing, serious medical problems. A letter from her physician indicates Ms. [REDACTED] suffers from

chronic headaches secondary to Pituitary Adenoma, requiring an MRI every six months and extensive medical supervision. Copies of her medical records confirm she has a history of ovarian cysts and has suffered from at least six miscarriages. The physician reiterates that Ms. [REDACTED] suffers from depression with suicidal tendencies and has had psychological problems since she was fifteen years old. According to the physician, Ms. [REDACTED] needs her husband's assistance as he is the only family support available to her and if he does not continue living with her, the risks to her health and safety would be greatly increased. Moreover, a letter from Ms. [REDACTED]'s mother corroborates the contention that Ms. [REDACTED] was abused as a child as both her mother and father were alcoholics and heavy drug users. Her mother contends she is now clean and sober, and states that her son-in-law has given Ms. [REDACTED] the love, respect, and happiness she could never provide for her own daughter. Furthermore, the most recent tax documents in the record show that Ms. [REDACTED] is unemployed and that the applicant is the sole income earner. Moreover, the record contains evidence addressing country conditions in Trinidad and the AAO takes administrative notice that the U.S. Department of State describes that violent crime remains high in Trinidad and that women should avoid traveling alone. *U.S. Department of State, Country Specific Information, Trinidad and Tobago*, dated May 9, 2013. Considering all of these factors cumulatively, the AAO finds that the hardship Ms. [REDACTED] would experience if she relocated to Trinidad to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

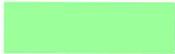
The AAO also finds that if the applicant's wife remains in the United States without her husband, she would suffer extreme hardship. As stated above, the record contains ample documentation addressing Ms. [REDACTED]'s on-going, serious physical and mental health problems. According to the psychologist as well as Ms. [REDACTED]'s physician, the applicant provides Ms. [REDACTED] with the support she needs to function in life. The record also contains evidence that Ms. [REDACTED] is no longer working and relies entirely on her husband for financial support. Considering all of these unique circumstances cumulatively, the AAO finds that the hardship the applicant's wife would experience if she remains in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case includes the applicant's misrepresentation of a material fact to procure an immigration benefit. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including his U.S. citizen wife; the extreme hardship to the applicant's family if he were refused admission; letters of support describing the applicant as a respectable, hardworking individual who loves his wife and is always willing to help others; a letter from the applicant's employer since 1995 who describes the applicant as a valued employee; and the applicant's lack of any arrests of criminal convictions.

The AAO finds that, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

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NON-PRECEDENT DECISION

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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 appeal is sustained.