

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: **OCT 16 2014** Office: NEW YORK, NY

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[REDACTED]

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The application then came before the AAO on a motion to reconsider. The motion was granted, but the appeal dismissed. The application is again before the AAO on a motion to reconsider. The motion will be granted and the appeal will be dismissed.

The applicant is a native and citizen of Guyana 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 having attempted to procure admission to the United States through fraud or a material misrepresentation. The applicant is the spouse of a U.S. citizen and the son of a lawful permanent resident mother. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

In a decision, dated April 23, 2013, the district director found that the applicant had failed to establish that his wife or mother would suffer extreme hardship as a result of his inadmissibility. The waiver application was denied accordingly.

On appeal, counsel stated that considering the high crime rate in Guyana, the applicant's mother's medical conditions, and the applicant's spouse's family and community ties to the United States, the record established that the applicant's spouse and mother were suffering extreme hardship as a result of the applicant's inadmissibility. With the appeal, counsel submitted an unsigned affidavit from the applicant's spouse, country conditions information for Guyana, and medical documentation for the applicant's mother.

In our decision, dated January 24, 2014, we found that the record did not establish that the applicant's mother and/or spouse would suffer extreme hardship as a result of the applicant's inadmissibility. Specifically, we found that in regards to the applicant's spouse, the record failed to indicate how separation was affecting the applicant's marriage considering that the applicant and his spouse had been separated for the last 12 years prior to filing the waiver application. In regards to the applicant's mother, the record failed to establish that the applicant's mother required the care of her son to maintain her wellbeing and the record contained no statement from the applicant's mother. Finally, the country conditions information failed to show the effect life in Guyana would have had on someone of the applicant's mother and/or spouse's health, income, and education level. We dismissed the appeal accordingly.

In her first motion, counsel asserted that our previous decision was incorrect based on raising an unreasonably high bar for interpretation of applicable law and based on current U.S. Citizenship and Immigration Services' policy. She asked that the applicant's case be reconsidered.

In our decision, dated June 24, 2014, we found that the record indicated that the applicant's mother would suffer extreme hardship as a result of relocating to Guyana because of the high crime rate in Guyana, the inability of the police to address this crime, the poor medical care in the country, and the applicant's mother's medical conditions involving cardiovascular problems and diabetes. However, the record did not show that the applicant's mother would suffer extreme hardship as a result of being separated from the applicant. More specifically, we recognized that the record

showed that the applicant's mother has a medical condition related to cardiovascular problems and diabetes, but the record failed to show that she could not maintain her wellbeing on her own or, if she is unable to care for herself, that she is unable to obtain care without the applicant in the United States. The record did not include statements from the applicant, the applicant's mother, and/or the applicant's brother, who resides in the United States. We stated further that the record contained no details concerning how the applicant's mother's needs were being met and how separation from the applicant is affecting these needs. Finally, we stated that the record did not indicate that the applicant's spouse would suffer extreme hardship as a result of separation from the applicant or relocation to Guyana. Thus, our previous decision on appeal was affirmed.

In her current motion, dated July 23, 2014, counsel states that the applicant's mother would suffer extreme hardship upon separation from the applicant because the applicant is her only caretaker and she is unable to care for herself. Counsel emphasizes the significant weight separation should be given in the applicant's case, based on case law and on the facts that because of the applicant's mother's age and her inability to relocate to Guyana, the separation from her son will likely be permanent. Counsel also states that although not as acute a case as the applicant's mother's hardship, the applicant's wife will suffer extreme hardship as a result of the applicant's inadmissibility. Finally, counsel states that the applicant warrants a favorable exercise of discretion. Counsel submits additional evidence of hardship on motion.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The applicant's motion meets the applicable requirements of both a motion to reopen and a motion to reconsider. With this motion, counsel submits evidence of the applicant's mother not being able to care for herself without the applicant. Counsel also states that the applicant's case should be reconsidered given the significant factor of permanent separation and cites to supporting case law.

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:

- (1) The [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.

On May 12, 2006, the applicant attempted to enter the United States in Fort Lauderdale, Florida by presenting false documentation for admission. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or a material misrepresentation. The applicant's qualifying relatives are his U.S. citizen spouse and his lawful permanent resident mother.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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. I.N.S.*, 138 F.3d 1292 (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.

As stated above, we previously indicated that the record established that the applicant’s mother would suffer extreme hardship as a result of relocation. We will not disturb this finding and will focus this decision on whether the applicant has established that his mother will suffer extreme hardship upon separation.

The following documents were previously submitted with the applicant’s waiver application: hospital discharge instructions, dated February 11, 2013, concerning the health of the applicant’s mother; an unsigned statement from the applicant’s spouse; and a country report on conditions in Guyana from the U.S. Department of State, Bureau of Diplomatic Security. With this motion, the applicant submits: affidavits from his mother and his spouse and a list of medical prescriptions for the applicant’s mother.

In our previous motion, we stated that the record failed to show that the applicant’s mother cannot maintain her wellbeing on her own or, if she were unable to care for herself, that she is unable to obtain care without the applicant in the United States. The record failed to include statements from the applicant, the applicant’s mother, and/or the applicant’s brother, who is currently residing in the United States. Counsel asserted that statements from family are not given great evidentiary weight in these proceeding. We stated that that assertion was incorrect. The assertions of the applicant and/or his qualifying relatives are relevant evidence and would be considered. When these statements are coupled with supporting documentation, these assertions can be given great weight. *See Matter of Kwan*, 14 I&N Dec. 175, 177 (BIA 1972) (“Information contained in an affidavit should not be disregarded simply because it appears to be hearsay. In administrative proceedings, that fact merely affects the weight to be afforded [it] . . .”). With the current motion, counsel submits affidavits from the applicant’s mother and the applicant’s spouse. However, these statements have not been

coupled with supporting documentation and include contradictory statements which greatly diminish the weight that can be given to the statements in these proceedings. The record fails to include statements from the applicant's brother or sister indicating that they are not able to help with their mother's care. We acknowledge that the applicant's mother states that the applicant's siblings have their own families and cannot help her. The applicant's mother states that she does not have a good relationship with her daughter, but that she does have a good relationship with the applicant's brother, although she only sees him a few times per year. Both siblings live in New York, but neither has submitted documentation to support the statements made by their mother and brother's wife. More importantly, statements in the record indicate that the applicant's mother requires daily care in the form of monitoring of her medications, maintenance of her house, and help with traveling to doctor's appointments and clinics, but the record fails to include a letter from a doctor or nurse treating the applicant's mother, indicating that she requires daily care and that the applicant is known to be her caretaker. While a listing of medications prescribed for the applicant's mother was submitted, absent an explanation from a medical professional, we are not in a position to determine the reason for the medications or the nature of the applicant's mother's conditions. Furthermore, the record is not clear as to the age of the applicant's mother. Counsel states that the applicant's mother is 74 years old and medical documentation in the record indicates that she is 73 years old, but in her affidavit, the applicant's mother gives her birthdate as June 6, 1946, making her 68 years old. In addition, the age of the applicant's mother is relevant because counsel asserts that given the applicant's mother's age, once separated from her son she will not see him again, making the separation permanent. Moreover, in her statement the applicant's mother states that relocation to Guyana is not out of the question for her, indicating, that despite the finding of extreme hardship upon relocation, she would still be willing to relocate to be with her son. Given these contradictions and the lack of documentation to support the statements made by the applicant's mother and spouse we cannot find that the current record establishes that the applicant's mother will suffer extreme hardship as a result of separation. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In regards to hardship the applicant's spouse will suffer as a result of the applicant's inadmissibility, we also affirm our previous decision. The affidavit from the applicant's spouse does not indicate that she would suffer hardship rising to the level of extreme as a result of separation or as a result of relocation. Similar to the lack of supporting evidence concerning the applicant's mother's hardship, the record does not contain any supporting documentation in regards to hardship to the applicant's spouse.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme

hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The record establishes that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse or lawful permanent resident mother as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion will be granted and the appeal dismissed.

ORDER: The motion is granted. The appeal is dismissed.