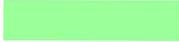


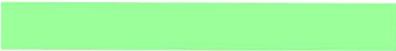


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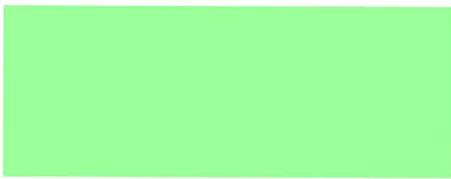


Date: **SEP 17 2014** Office: MIAMI FIELD OFFICE FILE: 

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. 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 Field Office Director, Miami, Florida, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 daughter of U.S. citizen parents and filed an application for adjustment of status to lawful permanent resident under Section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her parents and U.S. citizen spouse.¹

The field office director found that the applicant failed to establish that her qualifying relatives would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated January 23, 2014.

On appeal counsel for the applicant contends that the director failed to consider all relevant factors in determining that the applicant did not merit a waiver and that evidence in the record supports a finding of extreme hardship to the applicant's U.S. citizen parents. With the appeal counsel submits a brief. The record contains a statement from the applicant and her spouse, letters from doctors treating the applicant's parents, medical documentation for the parents, financial documentation, country information for Cuba in 2007, and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). 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

¹ Although the director found the applicant inadmissible for fraud or misrepresentation, the decision incorrectly identifies her inadmissibility as under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude and thus requiring a waiver under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

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 on September 10, 1999, the applicant attempted to enter the United States at the San Ysidro Port of Entry by presenting a fraudulent Mexican passport and was removed on September 11, 1999, through an Order of Expedited Removal. On September 26, 1999, the applicant was apprehended by U.S. Border Patrol agents after attempting to enter the United States without inspection, and indicated to agents that she was citizen of Mexico. Counsel does not contest the finding that the applicant is inadmissible for fraud or misrepresentation.

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 mother, stepfather, and spouse are the 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-Morales*, 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.

In her brief counsel asserts that letters from a psychiatrist and physicians treating the applicant’s parents indicate that they have serious health issues and that these medical conditions coupled with the parents’ ages make them physically and mentally unable to perform many tasks. Counsel asserts that the applicant’s parents require constant supervision and help with basic daily activities and that the applicant is therefore essential in managing her parents’ limitations. Counsel further contends that the applicant’s removal from the United States would cause her parents to lose her affection and result in psychological pressure harmful to their precarious health.

The applicant states that she is the main caregiver for her parents as she drives them to medical appointments and does daily household activities, including fixing meals and administering the medications essential to keeping them stable. The applicant asserts that her parents will not be able to withstand her absence because they totally depend on her efforts.

Letters from a primary care physician treating the applicant’s parents state that her mother suffers from hypertension, diabetes, recurrent depression, Osteoarthritis, and colon diverticulosis. The same physician states that the applicant’s stepfather has diabetes mellitus, chronic kidney disease, psoriasis, rheumatoid arthritis, hypertension and depression with psychosis. Another physician states that she is treating the applicant’s stepfather for seropositive rheumatoid arthritis and severe psoriatic skin disease, which the doctor refers to as chronic a condition requiring life-long treatment, and that the prognosis is fair. Medical records for the stepfather show regular health visits, but also an incidence of renal failure and an emergency visit.

Letters from a psychiatrist treating the applicant's mother state that she is in a delicate mental health state, suffering from chronic depression, and that she has tried multiple medications. In a one-page, handwritten letter the psychiatrist states that due to the severity of the mother's depression, she needs constant help with daily activities and relies on her relationship with the applicant and husband, so separating from the applicant could be extremely risky to her mental health. The same psychiatrist, also in a one-page handwritten letter, states that the applicant's stepfather suffers from major depression disorder and has also tried several medications. The psychiatrist states that the stepfather reached stability only after he had been hospitalized, and that separation from the applicant could cause him to lose all improvement and cause suicidal ideation where no medication or therapy would stabilize him. The letters from the psychiatrist state that the applicant is the person who helps and supervises her parents' care.

Counsel has not asserted a financial hardship nor submitted documentation to the record to establish that the applicant's parents would suffer financial hardship due to separation from the applicant. Counsel also has not asserted that the applicant's U.S. citizen spouse would experience extreme hardship due to the applicant's inadmissibility.

We find that the record fails to establish that the applicant's qualifying relatives will suffer extreme hardship as a consequence of being separated from the applicant. The letters from a psychiatrist are brief with little detail about the parents' conditions, and provide no information about how they were diagnosed, their treatment history, or any treatment plan. Without more detail we are unable to reach conclusions concerning the severity of the parents' conditions to establish that the hardships they would experience are beyond those normally associated when a family member is found to be inadmissible.

Evidence submitted to the record shows that the applicant's parents suffer from numerous health conditions, but does not establish the severity of those conditions or a prognosis beyond "fair", or that the applicant provides a role and care that could not otherwise be fulfilled. We recognize that the applicant's parents will endure some hardship as a result of long-term separation from the applicant. However, their situation if they remain in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship, based on the record.

We also find the record fails to establish that the applicant's parents would suffer extreme hardship were they to relocate to Cuba to reside with the applicant. Counsel asserts that if the parents relocate to Cuba to reside with the applicant they will not have medical insurance and will be deprived of the benefits provided by the American health care system. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence submitted to the record is insufficient to establish, however, that the applicant's parents suffer from conditions for which they would be unable to obtain care. The record contains copies of medical records and brief letters from a physician, but do not contain a clear, detailed explanation of the current medical conditions of the applicant's parents or their required treatments. Further, country information for

Cuba for 2007 submitted to the record does not establish that the parents would be unable to acquire necessary health care.

Although the depth of concern over the applicant's family's circumstances is neither doubted nor minimized, the fact remains that a waiver of inadmissibility is available only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, a waiver of inadmissibility is available only in cases of extreme hardship and not in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the applicant has failed to establish extreme hardship to her U.S. citizen parents or spouse 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.

We also note that the applicant is also inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II).

Section 212(a)(9) of the Act states in pertinent part:

....
(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

- (ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

Our finding of inadmissibility under section 212(a)(9)(C)(i)(II) is based on the applicant having been removed from the United States through expedited removal on September 11, 1999, and her entries to the United States without inspection on September 26, 1999 and on April 6, 2005. An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than 10 years since the date of the alien's last departure from the United States. See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least 10 years ago, the applicant has remained outside the United States and USCIS has consented to the applicant's reapplying for admission.

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 not been met.

ORDER: The appeal is dismissed.