

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **AUG 12 2015**

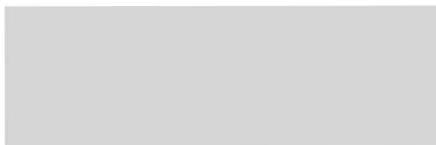
FILE #: [REDACTED]

APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey, denied the application. 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 Jordan 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 permanent residence through fraud or misrepresentation. The applicant 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 and U.S. citizen or lawful permanent resident children, born in 1996, 2000, 2001, and 2005.

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 for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director*, dated November 15, 2014.

On appeal the applicant submits a statement from her spouse, financial documentation, updated school documentation for her daughter, medical documentation, family photographs, biographic documentation, and country information for Jordan. 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 in support of an application to adjust status filed on August 20, 2010, the applicant stated that she had last arrived in the United States at [REDACTED] as an F-1 student. At a November 30, 2010, interview for her adjustment application the applicant submitted a Form I-94 Nonimmigrant Arrival/Departure Record indicating that she had entered the United States on October 12, 1998, as an F-1 student. The field office director determined the I-94 to be fraudulent and therefore found the applicant inadmissible for fraud or misrepresentation. On appeal the applicant has not contested the finding of inadmissibility.

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. Hardship to the applicant, the children, or the applicant's brother-in-law can be considered only insofar as it results in hardship to a qualifying relative. 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.

The applicant's spouse states that the applicant is the backbone of the family and that he needs her so he can work to provide for the children, who are still young. The spouse contends that the applicant cares for the children, gets them to school, and does household duties while he is self-employed and working long hours as sole financial provider for the family. He maintains that without the applicant he would have difficulty caring for the children while also working. He states that one daughter has learning disabilities and is dependent on the applicant, who constantly works with the daughter at home and attends meetings with school personnel about her learning disability.

Documentation submitted to the record includes a letter from the daughter's physician, dated December 8, 2014, stating that she suffers developmental delay in psychosocial and behavioral areas and that tests show she has an extremely low range of intellectual functioning. School documentation evidences that the daughter has been in special school programming since kindergarten in 2007, when she also showed symptoms of trichotillomania, and was placed in a severe learning disabilities class in the first grade. An evaluation dated February 11, 2011, notes that overall the daughter performs in an extremely low range in all academic areas, and a February 8, 2011, psychological report states that she is in the extremely low range of functioning intellectually. An evaluation dated March 12, 2014 identifies concern for the daughter's level of maturity, self-concept, socialization, and distractibility; classifies her as having communication impairment; and projects that at age 21 she will function in a community-based group home.

The spouse further asserts that if his children relocated with their mother to Jordan it would be a financial burden for him, causing mental distress. Letters from the applicant's children describe their love for and reliance on the applicant, and state that they can only speak English.

The spouse states that he also lives with three of his brothers, one of whom has retardation and needs constant care that the applicant provides. A letter from a medical doctor, dated December 2, 2014, establishes that the brother has severe mental retardation, is unable to maintain employment or care for himself, and requires 24-hour supervision.

We find that the record establishes that the applicant's spouse would suffer extreme hardship as a consequence of being separated from the applicant. The record shows that the spouse depends on the applicant to provide care for their children, three of whom are between nine and 15 years of age, and his brother, while the applicant operates his own business to support the family, and that without her assistance he would be unlikely to fulfill his obligations to his children and brother.

We also find that the record establishes that the applicant's spouse would experience extreme hardship if he were to relocate to Jordan to reside with the applicant due to her inadmissibility. The spouse states that it would be difficult in Jordan to find special needs schools for their daughter, that such schools are private and at a price he cannot afford, and that he and the applicant do not have the experience to be teachers for a child with disabilities.

According to the U.S. Department of State Country Reports on Human Rights Practices for 2014 for Jordan, although the law generally provides equal rights to persons with disabilities, such legal protections were not upheld. It states that citizens and non-government organizations universally reported that persons with disabilities faced problems in obtaining employment and accessing education, health care, transportation, and other services. It cites a report that school classrooms were not fully accessible and that there were no qualified teachers for children with disabilities. It further indicates that at all levels of education children with certain types of disabilities were excluded from studying certain subjects and often could not access critical educational support services.

The spouse further asserts that he is close to his brothers, that he has lived for more than 20 years in the United States, and that America is the only home his children have known.

Here we find that the record establishes that the applicant's children, three of whom were born in the United States, are integrated into the lifestyle and educational system. The Board of Immigration Appeals (BIA) found that a 15-year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). We find *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the applicant's children at this stage of their education and social development and relocate to Jordan would constitute extreme hardship to them, and by extension, to the applicant's spouse, the only qualifying relative in this case. We note specifically the applicant's daughter with severe learning disabilities and country information that suggests the unlikelihood of finding adequate care and facilities in Jordan were the daughter to relocate with the applicant. Alternatively, were the children to remain in the United States, the applicant's spouse would experience hardship due to long-term separation from his children.

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. at 301. 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-Moralez*, 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 stated 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 section 212(i) 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.*

The favorable factors in this case include the extreme hardship to the applicant's lawful permanent resident spouse and hardship to the applicant's U.S. citizen and lawful permanent resident children, letters of support for the applicant, and the apparent lack of a criminal record. The unfavorable factors include the applicant's fraud or misrepresentation in attempting to procure permanent residency in the United States, and periods of unlawful presence. 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.

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.