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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

DATE: FEB 26 2015

Office: PORTLAND, OREGON

FILE: [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:

[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.

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Portland, Oregon. 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 Lebanon who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring lawful permanent resident status by fraud or willful misrepresentation of a material fact. The applicant's spouse is a lawful permanent resident, and her parents and four children are U.S. citizens. The applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director found that the applicant failed to establish extreme hardship to a qualifying relative and also found that the applicant is not eligible for a waiver as a matter of discretion. She denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Field Office Director*, dated March 19, 2014.

On appeal, the applicant asserts that the Field Office Director erred as a matter of law by relying on a document the applicant had not placed into evidence, the *CIA World Factbook*, to deny the Form I-601 without giving her a chance to rebut the information in it; she erred as a matter of law in failing to engage in a cumulative analysis of the hardship factors; and she abused her discretion in not finding extreme hardship. *Brief in Support of Form I-290B, Notice of Appeal or Motion*, dated May 20, 2014.

The record includes, but is not limited to, counsel's brief, statements from the applicant and members of her family, a psychological evaluation of the applicant and her parents, financial records, medical records, photographs and country-conditions information about Lebanon. 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, that:

- (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:

- (1) The Attorney General [now Secretary of the Department of Homeland Security (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.

The record reflects that the applicant was the beneficiary of a Form I-130, Petition for Alien Relative, filed by her then-lawful permanent resident mother, who petitioned for her as an unmarried daughter of lawful permanent resident under section 203(a)(2) of the Act. Evidence in the record establishes that the applicant was in fact married at the time. The record also reflects that the applicant later misrepresented herself as unmarried in her Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), filed on November 17, 1986, and in the interview related to the Form I-485. Though the applicant was granted lawful permanent resident status in 1987, she was not eligible as a married daughter of a lawful permanent resident. In addition, the record reflects that the applicant misrepresented her dates of travel outside of the United States in her Form N-400, Application for Naturalization, dated September 9, 2002, and in her naturalization interview on February 24, 2003. The applicant was placed in removal proceedings on October 29, 2003 and was ordered removed *in absentia* on January 13, 2004. As such, the applicant lost her lawful permanent resident status. The applicant claims that she departed the United States in 2003. The applicant was paroled into the United States on July 23, 2006.

The record reflects that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for procuring admission (adjustment of status) to the United States through willful misrepresentation of a material fact. The applicant does not contest this 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. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse and parents. The record does not include evidence of hardship to the applicant's spouse. Therefore, only hardship to the applicant's parents will be discussed. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver and U.S. Citizenship and Immigration Services (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. *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.

The applicant asserts that the Field Office Director improperly relied on the *CIA World Factbook* for derogatory information about conditions in Lebanon and therefore took notice of the document without giving the applicant a copy and an opportunity to rebut the information within. The applicant asserts that this was contrary to 8 C.F.R. § 103.2(b)(16)(i), which states:

If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by [USCIS] and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

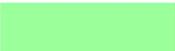
We note that the information cited in the denial decision comes from a publicly available website; therefore we find that the applicant was effectively aware of the information. Immigration officers “have the discretion to validate assertions or corroborate evidence and information by consulting USCIS or other governmental files, systems, and databases, or by obtaining publicly available information that is readily accessible.” See USCIS Policy Memorandum, *Requests for Evidence and Notices of Intent to Deny*, (PM-602-0085) (June 3, 2013)(available at website <http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/June>).

The applicant cites to *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002), as support for her assertion that the Field Office Director did not analyze the hardship factors cumulatively, as required in her case. Although the instant case requires a different hardship standard than that addressed in *Recinas*, legal authority clearly requires hardship factors to be considered cumulatively. The Field Office Director’s decision does not reflect that she failed to consider the applicant’s hardship factors cumulatively.

We will first address evidence of hardship to the applicant’s mother upon relocation to Lebanon. The record reflects that the applicant’s mother is 79 years old and her father is 84 years old. They moved to the United States in 1984. In addition to the applicant, her relatives in the United States include her son and his family in Oregon, and the applicant’s spouse and children.

Concerning her mother’s potential medical hardship, the applicant states that her mother was diagnosed with a brainstem stroke; and she has experienced dizziness, blurred vision, and extreme weakness in her legs and hands since then. A psychologist who evaluated the applicant’s parents states that the applicant’s mother’s medical conditions include severe rheumatoid arthritis, gastroesophageal reflux disease, chronic pain, anemia, and her mother reports as symptoms fever and swelling in her left arm which are secondary to breast cancer surgery in 1994. The psychologist also lists her father’s medical conditions as high blood pressure, vertigo, tinnitus, diabetes, hypertension and hyperplasia. The applicant’s mother’s medical records reflect that she had a minor stroke on April 4, 2013, and she has a history of hypertension, osteoporosis and hyponatremia.

Concerning hardship related to conditions in Lebanon, the applicant asserts that unstable conditions may deteriorate further due to the ongoing civil war in neighboring Syria. The applicant’s mother states that they lived in Beirut during the civil war in the early Eighties; her son and two nephews were shot and killed in Lebanon before she came to the United States in 1984; and as a result she suffered from depression and her spouse had a nervous breakdown. The psychologist who evaluated the applicant’s parents states that they fear for their safety in Lebanon; they no longer have a place to



live in Lebanon; and they both receive medical care for their chronic medical conditions in the United States. The applicant submits information on various wars in Lebanon, including conditions during the time that the applicant's parents resided there, from a Lebanese news website, [www.liberty05.com](http://www.liberty05.com). Moreover, the U.S. Department of State has issued a travel warning for U.S. citizens traveling to Lebanon, addressing ongoing safety and security issues, particularly terrorist bombing attacks throughout the country. *U.S. Department of State, Travel Warning- Lebanon*, dated November 26, 2014.

The record reflects that the applicant's mother is of advanced age, she has resided in the United States for over 30 years, and she has close family ties in the United States. In addition, she has significant medical issues. The record also reflects that the applicant's mother would encounter serious safety issues in Lebanon and could experience renewed emotional trauma related to her son's violent death there. Considering the totality of the hardship factors presented and the normal results of relocation, we find that the applicant's mother would experience extreme hardship if she relocated to Lebanon.

Addressing the hardships the applicant's qualifying relatives would experience upon remaining in the United States without her, the applicant states that both of her parents are in their eighties; they will not survive the trauma of her removal; and they lost their youngest son to the civil war in Lebanon. The applicant's mother states that the applicant is her only daughter, and she will experience extreme personal loss and emotional anxiety if the applicant and her children were in Lebanon, given its political instability and the likelihood of sectarian violence.

The applicant states that after her mother was diagnosed with a stroke, caring for her parents became primarily her duty; she goes to her mother's house every day and helps her walk, bathe, get dressed and shop; she takes her to her medical appointments and monitors her medications; and she provides her emotional support. As mentioned, the applicant's mother's medical records reflect that she had a minor stroke on April 4, 2013, and she has a history of hypertension.

The applicant's parents were evaluated by a psychologist, who describes their difficulty after their son was killed in 1980. The psychologist states that the applicant's mother has difficulty sleeping, has lost weight, has memory loss and finds relief from her sadness when the applicant and her grandchildren are present. The psychologist diagnosed the applicant's mother with major depression and her father with major depression, complicated by bereavement. The psychologist's assessment also lists the applicant's mother's medical issues, referenced earlier. The psychologist states that they do not believe that the applicant would be safe in Lebanon; and any additional loss, such as separation from the applicant, could exacerbate more severe symptoms.

The record reflects that the applicant's mother would experience significant emotional hardship without the applicant based on safety concerns for the applicant, her unique history in losing a son to violence there, and her closeness to, and reliance on, the applicant. She would also experience intensified psychological difficulties in addition to the medical issues with which the applicant assists her on a daily basis. Considering the totality of the hardship factors presented and the normal

results of separation, we find that the applicant's mother would experience extreme hardship if she remained in the United States.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 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. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 299 (BIA 1996). The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on her 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.

We note that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin*, *supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin*, *supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

*Matter of Mendez-Moralez* 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 (citation omitted).

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 section 212(h)(1)(B) 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 include the applicant's U.S. citizen children and parents, her lawful permanent resident spouse, extreme hardship to her mother, hardship to her father, and the lack of a criminal record. The unfavorable factors include the applicant's misrepresentations and her *in absentia* removal order.

We find that the favorable factors in the present case outweigh the adverse factors, such that 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.