

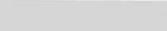


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUL 22 2015**

FILE #: 

APPLICATION RECEIPT #: 

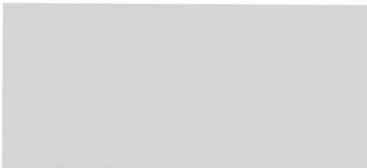


IN RE:



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.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Kendall Field Office, Miami, Florida (the director), denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), 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 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 attempting to procure admission into the United States through fraud or the willful misrepresentation of a material fact. The applicant is married to a U.S. citizen, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant's father is also a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse and family.

The director concluded that the applicant did not establish that extreme hardship would be imposed on a qualifying relative if her Form I-601 were denied. The director determined further that the applicant did not merit a favorable exercise of discretion, because her testimony relating to her travel to the United States was inconsistent and therefore not credible. The application was denied accordingly. *See Decision of the Director*, dated October 3, 2014.

On appeal the applicant asserts, through counsel, that the director abused his discretion by not finding that her father will suffer extreme hardship if she is denied admission into the United States. The applicant asserts that her father suffers from depression and medical ailments, and that his conditions will worsen if she is removed. The applicant indicates further that her father and his wife financially depend on her and that she takes care of her father and also helps him care for his ill wife. In addition, the applicant indicates, through counsel, that her testimony about her travel to the United States has been internally and externally consistent and that her case warrants a favorable exercise of discretion. *See Brief filed in Support of Appeal*, dated December 2, 2014.

The record includes, but is not limited to, affidavits from the applicant and her father; medical records for the applicant, her father, and her stepmother; employment and financial documentation for the applicant and her spouse; an apartment lease; documentation pertaining to identity and immigration status; and photographs. The applicant also submits an unpublished AAO decision and asserts that her case is factually similar to that case, in which we sustained the appeal. The entire record was reviewed and considered in arriving at a decision on the appeal.

Regarding the copy of the unpublished AAO decision the applicant submits and references on appeal, we note that unpublished decisions have not been designated as precedents and are not binding on this office or U.S. Citizenship and Immigration Services (USCIS) officers in the administration of the Act. *See* 8 C.F.R. § 103.3(c). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

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.

....

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

- (1) The Attorney General [now Secretary, 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 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 resident spouse or parent of such an alien.

In the present matter, the record reflects that the applicant attempted to gain admission into the United States by presenting a fraudulent Italian passport at [redacted] Airport on [redacted] 2003. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act, for willfully misrepresenting a material fact. The applicant does not contest her inadmissibility under section 212(a)(6)(C)(i) of the Act.

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. The applicant's qualifying relatives are her U.S. citizen husband and her U.S. citizen father. 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-Moralez*, 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 of Immigration Appeals (BIA) 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 U.S. 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 BIA 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 BIA 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 BIA 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 does not assert that her U.S. citizen husband will experience hardship if she is denied admission into the United States and he remains in this country. The applicant indicates in

her affidavit dated June 11, 2014, however, that her uncertain immigration status “is part of the reason [she and her husband] have not been able to have children” and submits medical evidence reflecting that the applicant was treated for infertility in 2009. The applicant does not explain how the couple’s infertility would affect her husband if she were denied admission into the United States. In addition, the 2009 medical evidence is several years old and, without more, does not establish that the applicant’s husband would experience hardship if the applicant is denied admission into the country. The record lacks any other evidence or claim regarding hardship that the applicant’s husband would experience as a result of the denial of her waiver application. Accordingly, the applicant has not submitted sufficient evidence to establish extreme hardship to her husband if she is denied admission and he remains in the United States.

The applicant also does not assert that her husband, a native of Cuba, would experience extreme hardship if he moved with the applicant to Cuba. The applicant indicates in a [REDACTED] 2012 affidavit, however, that her husband would be arrested in Cuba because he changed his name in [REDACTED] after becoming a victim of identity theft. The applicant does not explain why authorities in Cuba would arrest her husband because of his name change. Moreover, she submits no country-condition or other documentary evidence to corroborate her claim that her husband would be arrested if he relocated to Cuba. The applicant, therefore, has not established that her husband would suffer extreme hardship if he relocated with her to Cuba.

The applicant has, however, established that her father would experience extreme hardship if she is denied admission into the United States and he remained in this country without her.

The applicant states that her 68 year-old father suffers from several medical ailments, in addition to depression, and that he “has been under psychiatric treatment for years.” The applicant indicates that her father and his wife reside with her and her husband, they rely on her financially, and they would have nowhere to go without her support. The applicant indicates further that her father’s wife is unable to care for him, because she also suffers from numerous medical problems and requires care herself. The applicant explains that she is her father’s only child, and that he relies on her to care for him, to make meals, to make sure he takes his medications, and to support him emotionally.

The applicant also stated, in an affidavit submitted with her Form I-601, that her father is in poor health, his wife is also ill and sometimes “can’t even get out of bed,” and that she helps them both find doctors for their ailments. The applicant indicated that her father has been in the United States since 1992; that when she arrived in the United States her father was suffering from “massive depression”; that many times her father did not want to leave his room or bathe; that he was suicidal; and that her “presence in this country was the only thing that brought him joy,” temporarily.

The applicant’s father states in an affidavit dated June 11, 2014, that the applicant “is everything” to him, and that he and his wife depend on the applicant for their care and for their “mental stability.” He adds that his medical conditions and depression have worsened, and he continues to have suicidal thoughts, a lack of appetite, and an inability to sleep; and that the applicant cares for him and motivates him “to continue fighting for [his] life and stability.” He states that he needs

the applicant for his “mental, physical and emotional stability.” He also indicates that the applicant ensures that he takes his daily medications, and that because his wife sleeps soundly at night due to her pain medications, it is the applicant who wakes up to console him when he is unable to sleep at night or suffers from anxiety attacks.

In an affidavit dated May 14, 2012, the applicant’s father discussed his depression and his wife’s ailments, and he stated that without the applicant in this country, no one would take care of them. The applicant’s father stated that the applicant and her husband “pay for everything in the house and provide everything” for them. He added that he and his wife would be unable to pay for their rent on their retirement income, and they would not have the home or comfort they now enjoy without the applicant. He stated further that the thought of living without the applicant makes him “feel like not living.”

Upon review, the evidence in the record does not establish that the applicant’s father financially depends on the applicant. Although the applicant submits evidence, in the form of letters from her employer and the income tax returns she and her spouse have filed, which show that she earns \$11 an hour working full time as a dental assistant, and that she and her husband have a joint annual income between \$61,000 and \$66,000, the record lacks independent financial information for the applicant’s father and his wife to corroborate claims about their income, expenses and financial circumstances. The apartment lease in the record for the period between August 2010 and December 2013 also does not reflect that the applicant’s father financially depends on the applicant, as it is signed by the applicant and her father’s wife as primary lease holders. Similarly, although utility bills contained in the record reflect that the bills are in the applicant’s name, the record lacks evidence to demonstrate that only the applicant pays the bills or to demonstrate that the applicant’s father cannot financially contribute to assist the applicant with their household bills.

The evidence also does not corroborate claims that the applicant’s father depends on the applicant for his medical care. Although the record contains medical evidence reflecting that the applicant’s father has been diagnosed with several serious physical ailments, the physicians’ letters and reports do not demonstrate that these ailments have resulted in her father’s inability to care for himself or that he depends on the applicant for his medical care. Similarly, medical documentation reflecting that the applicant’s father’s wife has been diagnosed with several medical ailments does not demonstrate that her conditions render her unable to care for herself or to assist the applicant’s father with his medical care, if necessary.

The evidence in the record, however, is sufficient to establish that the applicant’s father would suffer extreme psychological hardship if the applicant were denied admission into the United States and he remained in this country separated from her. Medical documentation from 2013 and 2014 reflects that the applicant’s father has been diagnosed with major depressive disorder, that he suffers from recurrent episodes of the disorder, and that he is on daily medication for his condition. According to a January 3, 2012, letter from his psychiatrist, the applicant’s father suffers from major depression and is being treated with psychotropic medications. In addition, medical outpatient progress notes in the record reflect that the applicant’s father’s condition dates back to at least 2008. A psychiatrist at [REDACTED] states in a November 25, 2014,

medical letter that the applicant's father is being treated with medication for major depression; the applicant's "legal status in this country has been a significant stressor" affecting her father's mood and is a source of his depression, and that her father's "overwhelming preoccupation is a favorable resolution of [the applicant's] legal status." The record also reflects that the applicant and her father had been separated for many years before her arrival in 2003. Overall, the record contains sufficient evidence to establish that the applicant's father would experience extreme psychological hardship if the applicant is denied admission into this country and he remained in the United States separated from her.

In the present matter, however, the applicant has not claimed that her father, a native of Cuba, will endure hardship if he relocates to Cuba with her, and the record lacks evidence addressing his potential hardships there. We therefore find, based on the record before us that the applicant has not established that her father would suffer extreme hardship if he relocated with her to Cuba.

Upon review, the record contains insufficient evidence to show that the hardships faced by the applicant's father, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996).

Accordingly, the applicant has not established extreme hardship to a qualifying relative 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 she merits a waiver as a matter of discretion.

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.