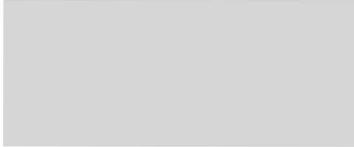


(b)(6)

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



U.S. Citizenship
and Immigration
Services



Date: JUL 31 2015

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the 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, Kingston, Jamaica, denied the waiver application. The matter was appealed to the Administrative Appeals Office (AAO). The appeal was sustained. The AAO subsequently sua sponte reopened the matter and issued a Notice of Intent to Dismiss (NOID). The previous decision of the AAO to sustain the appeal is now affirmed.

The record reflects that the applicant is a native and citizen of Jamaica who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is the daughter of a U.S. citizen parent and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her mother in the United States.

The field office director found that the applicant had not established extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contended the applicant established extreme hardship, particularly considering her mother's significant family ties to the United States, her advanced age, her health, and country conditions in Jamaica.

On April 5, 2013, this office sustained the appeal, finding that the applicant had established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act, and further, that the applicant merited a waiver of inadmissibility as a matter of discretion as the favorable factors in the present case outweighed the adverse factors.

On May 14, 2015, we sua sponte reopened the matter and issued a NOID, noting that it appeared to this office that the applicant's mother, the qualifying relative in this case, did not live alone, thus calling into question the claimed hardships. The applicant was granted thirty (30) days from the date of this notice to respond. On June 16, 2015, we received a brief and documentation in support from counsel. The record was reviewed and considered in its entirety in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien

In this case, the record shows, and the applicant does not contest, that in February 2001, the applicant attempted to enter the United States using a Jamaican passport with two back-dated Jamaica entry stamps in an attempt to disguise periods of unauthorized stay in the United States. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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 record establishes that the applicant's U.S. citizen mother is the only qualifying relative in this case. Hardship to the applicant 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 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 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 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 v. I.N.S.*, 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.

On appeal, this office determined that the record of evidence established that the applicant's U.S. citizen mother would experience extreme hardship were she to remain in the United States while the applicant continued to reside abroad. We found that as a result of the applicant's mother's numerous medical conditions, including diabetes, stage III chronic kidney disease, cardiomyopathy, and diabetic retinopathy which caused her to have difficulty seeing and self-administering her insulin, and because she lived alone, she would experience extreme hardship if the applicant was unable to reside in the United States and assist in her daily care. We noted that the applicant's mother maintained that her other children did not live close by and letters from the applicant's mother's other children and family members corroborated her claim that she lived alone and that they were unable to care for her on a daily basis. We found on appeal that the hardship the applicant's mother would experience if she remained in the United States was extreme, going beyond those hardships ordinarily associated with inadmissibility.

In the NOID issued by this office in May 2015, we noted that it had come to our attention that the applicant's mother may not be residing alone, as previously attested. In response to our NOID, counsel submitted a brief and detailed evidence establishing that the applicant's mother does in fact reside alone. Such evidence included an affidavit from the applicant's mother, financial documentation, tax and property records, and government records. As such, our previous finding in our decision to sustain the appeal, that the hardship the applicant's mother would experience if she

remained in the United States was extreme, going beyond those hardships ordinarily associated with inadmissibility, is now affirmed.

In our previous decision to sustain the appeal we also found that if the applicant's mother returned to Jamaica to be with her daughter, she would experience extreme hardship. We recognized that returning to Jamaica would disrupt the continuity of her health care and that she would lose her Social Security and Medicare benefits. Moreover, we acknowledged that the applicant's mother has lived in the United States for more than twenty years, since 1989, and that readjusting to living in Jamaica would be difficult, particularly considering her advanced age and medical problems. Furthermore, we also acknowledged that crime, including violent crime, is a serious problem in Jamaica, that medical care is much more limited than in the United States, and that emergency medical and ambulance services are limited. Considering all of these factors cumulatively, we affirm our previous finding in our decision to sustain the appeal that the hardship the applicant's mother would experience if she returned to Jamaica to be with her daughter is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen mother would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, we affirm our previous finding that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. See *Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). This office must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

As we previously noted in our decision to sustain the appeal, the adverse factors in the present case include the applicant's misrepresentation of a material fact to procure an immigration benefit and the applicant's previous overstay. The favorable and mitigating factors in the present case include: the applicant's significant family ties to the United States, including her U.S. citizen mother and siblings; the extreme hardship to the applicant's mother if she were refused admission; and the applicant's lack of any arrests or criminal convictions.

The violations committed by the applicant are serious in nature. Nonetheless, we affirm that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's 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. Accordingly, this office's previous decision to sustain the appeal is affirmed.

ORDER: The previous decision of the AAO to sustain the appeal is affirmed.