

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



U.S. Citizenship
and Immigration
Services

(b)(6)



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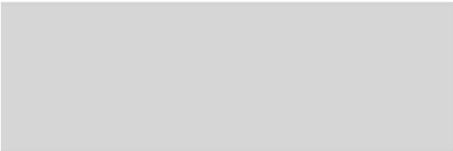
FILE: [REDACTED]

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 that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland denied the waiver application and an appeal was filed with the Administration Appeals Office (AAO). The AAO subsequently issued a Request for Evidence (RFE). The appeal will be sustained.

The applicant is a native and citizen of Guyana 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 having attempted to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse and stepchildren.

The District Director concluded the applicant did not demonstrate that a qualifying relative would experience extreme hardship because of his inadmissibility and denied the application accordingly.

On appeal, filed on January 19, 2011 and received by this office on June 19, 2014, counsel submitted a brief in support. In the brief, counsel contended that in the denial, the District Director discounted the severe emotional hardship the applicant's spouse would experience given her depression diagnosis, as explained in a psychological evaluation. Counsel also asserted that the District Director failed to consider the hardship the spouse would experience as a single mother to a special needs child, as well as other documented hardship evidence.

On December 14, 2014, this office issued an RFE requesting updated and/or new evidence to establish extreme hardship to a qualifying relative. On March 9, 2015, we received a response to the RFE. The response included a brief, affidavits from the applicant and his spouse, medical and psychological documentation, financial documentation, support letters, and family photographs. The entire record was reviewed and considered in rendering this decision.

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:

- (1) The [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.

As previously noted in our RFE, the record reflects that on September 28, 2006, the applicant attempted to procure admission into the United States by presenting a Canadian citizenship card as well as other documents which were not issued to him, bearing a different name and date of birth. Inadmissibility is not contested on appeal or in response to the RFE. Therefore, we affirm that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through 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 U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant, his spouse's children, or the applicant's siblings, 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). 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 Ige*, 20 I&N Dec. 880 (BIA 1994)

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 (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 U.S. citizen spouse contends that she will suffer extreme hardship were she to remain in the United States while her spouse relocates abroad due to his inadmissibility. The applicant’s spouse states that as a result of past abuses and abandonment issues, she suffers from an immense amount of anxiety at the thought that her husband may not be by her side each and every day and as a result, she slips into depression. The applicant’s spouse also maintains that as result of the dissolution of two of her businesses because she could no longer afford to run them, she had to transfer her daughter to public school and she needs her husband to assist their daughter with respect to this new educational environment. The applicant’s spouse further details that her daughter had a difficult start in life and she needs the continuity, security, and parental care that both the applicant and his spouse provide. The applicant’s spouse concludes by asserting that without her husband by her side, her depression would be debilitating, she would not be able to support her husband abroad, she would be unable to maintain her other businesses, and her daughter’s life would be disrupted irreparably.

The applicant has submitted evidence establishing that his wife has been diagnosed with depression. The applicant has also submitted evidence establishing that his stepdaughter would experience emotional hardship were he to relocate abroad while she remained in the United States. In addition, the applicant has provided documentation to establish that two of the family businesses have been dissolved. Finally, letters in support have been provided from the applicant’s and his spouse’s family outlining the hardships the applicant’s spouse would face were the applicant to relocate abroad as a result of his inadmissibility. The record reflects that the cumulative effect of the emotional and financial hardship the applicant’s spouse would experience due to the applicant’s inadmissibility rises to the level of extreme.

In regard to relocating abroad to reside with the applicant as a result of her inadmissibility, the applicant's spouse first explains that she does not have any significant ties to Guyana as she has been living in the United States for over 30 years. The applicant's spouse further maintains that her adult son and nearly all of her siblings are in North America and long-term separation from them would cause her hardship. She asserts that were she to relocate to Guyana, her pre-teen daughter would suffer due to a primitive educational system, high rates of crime and poverty, and physical ailments including skin irritations and gastrointestinal problems. The applicant's spouse also states that she would not be able to run her businesses from Guyana and would not be able to meet the financial obligations that she currently has.

The record establishes that the applicant's spouse has been residing in the United States for over three decades. She has extensive community and church ties. In addition, the record establishes that the applicant's spouse's son and most of her siblings and their extended relatives reside in the United States. Further, the record establishes that the applicant's spouse has numerous business ties, including ownership of businesses and rental property. Finally, the U.S. Department of State has confirmed that serious crime, including murder and armed robbery, is a major problem in Guyana, and the per capital murder rate is three times higher than that of the United States. The applicant has thus established that his spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen wife would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, we find 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).

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and stepchildren would face if the applicant were to relocate to Guyana, regardless of whether they accompanied the applicant or stayed in the United States; the applicant's community ties; support letters on behalf of the applicant; the applicant's ownership of businesses, rental properties and a home in the United States; the payment of taxes; and church ties. The unfavorable factors in this matter are the applicant's attempted entry to the United States by fraud or willful misrepresentation, as detailed above, and subsequent and related criminal conviction¹; and periods of unlawful presence and employment while in the United States.

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. The burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.

¹ As the record establishes that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), we need not determine whether the applicant's above-referenced conviction also renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act.