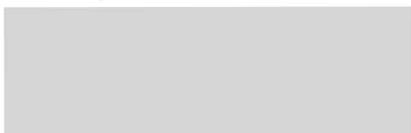




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE:

JUN 15 2015

FILE

APPLICATION RECEIPT:

IN RE:

Applicant:

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 New York District Director denied the waiver application 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 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 procured admission to the United States through fraud or misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). The applicant 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.

The District Director determined that the applicant had not established extreme hardship to her qualifying relative if she were removed from the United States and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See District Director's Decision*, dated September 23, 2014.

On appeal, the applicant, through counsel, urges us to consider the totality of circumstances to determine that the applicant's qualifying spouse will suffer extreme hardship if she is required to leave this country. The applicant further asks that we consider her efforts at rehabilitation and the length of time that has elapsed since her illegal conduct. The applicant also asserts that new evidence submitted on appeal supports finding her spouse would experience extreme hardship, should she be removed to Guyana. Finally, the applicant claims that we should conclude that her spouse would experience extreme hardship if she is removed, because we have found extreme hardship in similar cases; she submits excerpts of those decisions on appeal. *See brief submitted in support of the Form I-290B, Notice of Appeal or Motion*, filed October 24, 2014.

The record of evidence includes, but is not limited to: statements from the applicant, her qualifying spouse, friends and relatives; identity and relationship documents; medical documentation; financial records; and reports about conditions in Guyana. The entire record was reviewed and all relevant evidence considered in reaching 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:

The Attorney General [now the Secretary 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 applied for and obtained a nonimmigrant visa under an alias, [REDACTED] and misrepresented her date of birth because she had previously been denied entry into the United States. She applied for admission and was inspected and admitted using her nonimmigrant visa on November 18, 2001, at [REDACTED]. The applicant is the beneficiary of an approved Form I-130. Her qualifying relative is her U.S. citizen spouse. The applicant concedes that she is inadmissible 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. 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-Morales*, 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 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.

On appeal, the applicant, through counsel, refers to non-precedent unpublished AAO decisions reflecting circumstances similar to the applicant's in which we determined that an applicant had established that a qualifying relative would experience extreme hardship if the waiver were denied. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all U.S. Citizenship and Immigration Services employees in the administration of the Act, unpublished decisions are not similarly binding.

In a statement, the applicant's qualifying spouse says if he moved to Guyana to be with the applicant, he would suffer emotionally as a result of separation from his parents, brother, and step-siblings, who all reside in the United States. The applicant also submits a declaration from her mother-in-law, who states that relocation would require her son to give up the only life that he has known.

In support of the qualifying spouse's assertion that he would suffer emotionally if he relocates to Guyana, the applicant submits a letter from a doctor who states that the applicant's spouse told him he cannot imagine leaving his parents behind or how he would survive in Guyana. The doctor states that the applicant's husband was diagnosed with adjustment disorder with depressed mood and anxiety, without stating who made the diagnosis. The applicant provides unclear evidence concerning who evaluated and diagnosed her spouse. Although the letter is signed by a medical doctor, the record does not include evidence showing his area of practice is psychiatry or that he is a psychologist. The record also does not show how frequently this doctor has seen her spouse and how familiar he is with his emotional and medical issues.

The applicant's spouse expresses concern about his ability to earn a sufficient wage in Guyana to support himself, the applicant and his father. He says that his father is unable to work so he assists him financially. The record includes inconsistent evidence concerning where the applicant's father-in-law currently resides. The applicant's spouse also states that in Guyana, he would be unable to find employment in his area of expertise as an emergency medical technician. The record, however, reflects that although the applicant's spouse once worked as an emergency medical technician, he currently works as a parts manager for a national automobile servicing company. Her spouse also

states that, given high unemployment rates in Guyana, he would be unable to meet his financial obligations if he relocated and that would cause him stress and anxiety. To corroborate claims concerning the negative financial repercussions of relocating to Guyana, the applicant submits country reports indicating that based upon its gross domestic product, Guyana remains one of the poorest countries in the Western Hemisphere.

The applicant's spouse states that stress and anxiety trigger migraine headaches. The applicant does not submit corroborating evidence of her spouse's migraine headaches. Although the applicant's spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant's spouse says that given his health status, it is vital to remain in the United States, because if he moved to Guyana, he would lose his medical insurance and he is uncertain he would find proper medical care. In support of the claim that health care is less available in Guyana, the applicant submits several country reports, one of which concludes that Guyana's health systems "leave a lot to be desired." Another declares that medical care in Guyana does not meet U.S. standards. Moreover, both the applicant and her qualifying spouse are concerned that, should they need to resort to fertility treatments, it's unlikely that these are available in Guyana. The record contains no corroborative evidence addressing this assertion.

In addition, the applicant's spouse writes that Guyana has very high crime rates. To support this claim, the applicant submits country reports documenting that criminal activity continues to be a major problem in Guyana.

The applicant has shown that should her spouse relocate to Guyana, he would suffer emotional distress due to separation from his family and because he has not lived outside of the United States. However, though the applicant provides general country-conditions information about Guyana, has not provided sufficient evidence to corroborate claims of the specific medical and financial hardship her spouse would experience upon relocation. Specifically, the record lacks information corroborating claims of her spouse's medical conditions and financial obligations. We therefore find that, considering the evidence in the aggregate, the record is insufficient to establish that the applicant's qualifying spouse will suffer extreme hardship should the present waiver application be denied and he joins the applicant in Guyana.

The applicant and her qualifying spouse submit several declarations, asserting that if they are separated, her spouse will suffer extreme emotional, medical, and financial hardship. The applicant's qualifying spouse states that their separation would exacerbate his depression and anxiety levels and he would suffer emotionally, in part, because he is afraid that he would lose the applicant. He asserts that their mutual dream of having a child together would be dashed for logistical and financial reasons. His father states that the applicant's qualifying spouse cannot fathom a life without the applicant.

The applicant's qualifying spouse says he relies upon the applicant for both physical and emotional support and that he suffers from serious migraine headaches. He relates that when he suffers migraine

headaches at work, the applicant has to pick him up from work, drive him home and otherwise tend to him.

The applicant, her qualifying spouse, and his parents all state that the applicant's qualifying spouse financially supports his father. The applicant's spouse expresses concern that the applicant would have difficulty finding a job in Guyana, and even if successful, her wages would be low. He says he would therefore suffer financially, because he relies on the applicant for her financial contributions. The applicant provides copies of the couple's tax returns for the years 2009-2013 that show that the applicant provides a significant portion of the couple's income. The record also includes a list of her family's monthly expenses and income.

To corroborate claims that the applicant's spouse would suffer emotionally if he remains in the United States without the applicant, the applicant submits a letter from a doctor who states that the applicant's spouse has anxiety attacks when he contemplates separation. The applicant, however, does not provide evidence of this doctor's qualifications in psychiatry or psychology and does not state whether he is her spouse's primary physician. Moreover, the record lacks medical evidence concerning her qualifying spouse's migraine headaches. As noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Though the record shows the applicant's spouse would experience emotional hardship without the applicant, the record is insufficient to establish that he would experience other types of hardship in the United States. The financial documentation the applicant submits shows that she applicant and her qualifying spouse are both employed in the United States, but it does not show that her spouse will suffer financial hardship if he remains in the United States. Though her spouse lists their expenses, the record lacks evidence depicting these asserted expenses. In addition, though the applicant provides evidence of her family's combined annual income, without information about their expenses, we cannot determine what impact the loss of her income would have upon the applicant's qualifying spouse and the extent to which this would cause him hardship.

In this case the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The applicant has not established extreme hardship to her U.S. citizen spouse 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 the applicant 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.