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



U.S. Citizenship
and Immigration
Services



Date: **MAY 05 2015**

Office: NEW YORK

FILE:

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:



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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The District Director, [REDACTED] New York, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 attempting to procure admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with her U.S. citizen spouse.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated September 5, 2014.

On appeal, the applicant asserts that her spouse would suffer extreme hardship if the waiver application is denied and submits additional evidence of hardship to her spouse.

The record includes, but is not limited to, the following documentation: statements by the applicant and the applicant's spouse, financial documentation, a psychological evaluation for the applicant's spouse, medical documentation for the mother of the applicant's spouse, and country conditions information on Guyana. 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:

- (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.

The record indicates that the applicant attempted to enter the United States on June 21, 2002 using the Transit Without Visa program when she had no intention of transiting through the United States. In addition, during inspection by U.S. immigration authorities, the applicant presented a counterfeit Form I-551, Resident Alien card. The applicant does not contest her inadmissibility under section 212(a)(6)(C)(i) of the Act.

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

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. . . .

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse and U.S. citizen parents are the only qualifying relatives in this case.¹ Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, U.S. Citizenship and Immigration Services (USCIS) does consider a child's hardship a factor in determining whether a qualifying relative experiences extreme hardship. 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).

¹ The record indicates that the applicant's parents reside in the United States, and are naturalized U.S. citizens. Although the applicant states that her father suffers from diabetes, she presents no evidence that either of her parents will suffer extreme hardship if the waiver application is not approved and she is removed from the United States.

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 v. INS*, 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.

The applicant contends that her spouse will suffer from financial hardship if the waiver application is not approved. The record indicates that the applicant’s spouse is employed as maintenance worker with a real estate management company. A letter in the record dated March 27, 2013 indicates that he earns a gross yearly salary of \$44,000. Financial documentation submitted with Form I-864, Affidavit of Support, includes a 2012 Form W-2, Wage and Tax Statement indicating the applicant’s spouse’s wages, tips, other compensation were \$49,591.48, and a copy of his 2012 federal income tax return indicates an adjusted gross income of \$36,471.00. The applicant’s spouse indicates that his assets include ownership of two properties, his home and an investment property. The applicant’s spouse contends that he relies upon income from the applicant; however, although the record includes a January 2013 letter from the applicant’s employer stating that she works as an office administrator, the letter does not state how much she earns there. Further, the 2012 joint federal income tax return does not report any income from the applicant and lists that the applicant’s occupation as housewife. There is no evidence on the record of the applicant’s income or the amount of financial support she is able to provide to the family. The evidence in the record is insufficient to conclude that the applicant’s spouse would be unable to meet his financial obligations in the applicant’s absence.

The applicant further contends that her spouse will experience psychological hardship if the waiver application is not approved. In a statement submitted with the applicant’s Form I-601, the applicant’s spouse states that he has been experiencing bouts of depression and anxiety for years, but states he does not believe in psychologists or therapy. On appeal, the applicant submits a

psychoemotional and marital dynamics assessment for the applicant's spouse which indicates that he suffers from adjustment disorder with mixed anxiety and depressed mood and persistent depressive disorder. Although we are sympathetic to the family's circumstances and recognize that the input of any health professional is respected and valuable, the record does not show that the hardship to the applicant's spouse, and the symptoms he has experienced, are extreme or atypical compared to others separated from a spouse.

The record contains references to hardship the applicant's son would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as factors to be considered in assessing extreme hardship. As stated above, under 212(i) of the Act, children are not deemed to be qualifying relatives, and a child's hardship will only be considered to be a factor if it affects whether a qualifying relative experiences extreme hardship. While the psychoemotional and marital dynamics assessment for the applicant's spouse submitted to the record states that the separation of the applicant's son from the applicant would have a direct deleterious impact the applicant's spouse's emotional well-being, the record fails to establish that any hardship to the applicant's son would result in hardships that are extreme to the applicant's spouse.

The documentation on the record indicates that the applicant's spouse will suffer from some hardships if he is separated from the applicant. However, the record lacks sufficient evidence demonstrating the severity of these hardships or the effects on his daily life to establish that in the aggregate they are above and beyond the hardships normally experienced, such that the applicant's husband would experience extreme hardship if the waiver application is denied and he is separated from the applicant.

The applicant contends that her spouse will suffer hardship if he were to relocate to Guyana. The record indicates that the applicant's spouse was born and raised in Guyana. While we recognize that the applicant's spouse has resided in the United States since 2002 and is now a U.S. Citizen, he is familiar with the language and customs of Guyana.

The applicant states that she and her spouse would face persistent unemployment and underemployment in Guyana, and she submits country-conditions information regarding the poverty conditions in Guyana. However, the applicant fails to provide evidence that conditions would adversely affect the qualifying spouse specifically. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The applicant states her spouse would fear for their safety due to the expansion of crime and gang-related and drug-related criminality throughout Guyana. While the Bureau of Consular Affairs of the U.S. Department of State states on its website that crime is a problem in Guyana, we note that the U.S. Department of State has not currently issued any travel advisory or travel warning for Guyana.

The applicant further asserts that her spouse must remain in the United States to care for his widowed mother, who has insulin-dependent diabetes and heart disease. The applicant states that her spouse's mother resides with them, and she is dependent on the applicant and her spouse for care

and support. The record includes medical documentation for the applicant's mother-in-law, including prescriptions for treating diabetes and other medical conditions, and evidence that the applicant's mother-in-law was treated for ovarian cancer in 2006. However, the record fails to establish whether the mother of the applicant's spouse has other family members to support her; USCIS records indicate that the applicant's mother-in-law has at least one other child who entered the United States at the same time as she did in 1993.

Based on the evidence on the record, the applicant has not established that her spouse would suffer hardship beyond the common results of removal if he were to relocate to Guyana to reside with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate but expected difficulties arising whenever a loved one is removed from the United States. Although we are not insensitive to the situation of the applicant's spouse, the record does not establish that the hardship he faces rises to the level of extreme, as contemplated by statute and case law. Moreover, 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.