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



[Redacted]

DATE: **MAY 22 2015**

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:

[Redacted]

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,

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 Administrative Appeals Office (AAO). The AAO subsequently issued a Request for Evidence (RFE). The appeal will now be dismissed.

The record reflects that the applicant is a native and citizen of El Salvador 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 entry into the United States by fraud or willful misrepresentation. The applicant is applying for 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 U.S. citizen father and step-mother and lawful permanent resident mother.

The district director found that the applicant had not established that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, filed in July 2009 and received by this office on December 3, 2014, counsel contended that the applicant was not inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act and, alternately, asserted that extreme hardship to a qualifying relative had been established. In support, counsel submitted an affidavit from the applicant, immigration documents pertaining to the applicant's sisters, a copy of an INS memo on unaccompanied minors subject to expedited removal, and a letter from the applicant's former landlord.

On January 9, 2015, this office issued an RFE finding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, and further requesting updated and/or new evidence to establish extreme hardship to a qualifying relative and that favorable exercise of discretion was warranted. On April 2, 2015, we received a brief and supporting documentation. The record was reviewed and considered in its entirety 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.

In the present case, the record reflects that on September 17, 1994, the applicant attempted to procure admission into the United States by presenting a fraudulent passport. On appeal, counsel maintained that the applicant was a minor at the time and was thus legally incapable of forming an intent to make a willful misrepresentation or to commit fraud. In our RFE, we determined that the applicant willfully misrepresented a material fact and was inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. Our finding has not been contested in counsel's response to the RFE.

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 father, U.S. citizen step-mother and lawful permanent resident mother are the only qualifying relatives 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-Moralez*, 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.

The applicant’s U.S. citizen father contends that he and his U.S. citizen wife will suffer extreme hardship were they to remain in the United States while the applicant relocates abroad due to her inadmissibility. The applicant’s father first explains that his wife has a history of depression and has been hospitalized on numerous occasions and he thus needs the applicant to help care for his five children and provide emotional and financial support. The applicant’s father further details that the house he was renting burned down in November 2014 and everything was lost and the applicant’s financial, emotional and physical help was indispensable to him and the children. In a separate declaration, the applicant’s lawful permanent resident mother states that the applicant provides her with emotional, financial and physical help as she suffers from diabetes, arthritis, high blood pressure and failing vision.

We acknowledge the contention that the applicant’s father, mother and step-mother will experience emotional hardship were they to remain in the United States while the applicant resides abroad, but the record does not establish the severity of this hardship or the effects on their daily lives. A letter from the applicant’s mother’s treating physician states that the applicant’s mother suffers from fibromyalgia and osteoarthritis. The letter does not, however, provide detail about any limitations on her daily activities and ability to care for herself or what hardships she will experience were her daughter specifically to reside abroad. Further, while the record establishes that the applicant’s step-mother was admitted to a hospital on November 15, 2014, the applicant has not submitted any medical documentation from her step-mother’s treating physician outlining her medical or mental

health condition, the severity of her condition, and what hardships she will experience were her step-daughter specifically to reside abroad.

The record establishes that the applicant's father and step-mother have five children together, two that are currently teenagers. Further, the applicant states that her two sisters, born in 1978 and 1980 from her father's marriage to her mother, are in the United States with Temporary Protected Status. Moreover, the applicant's father states that he took his children to live with "a relative" after the fire. The applicant has not established that these relatives are unable to assist her mother, father and step-mother as needed.

As for the financial hardship referenced, counsel has not provided any documentation on appeal establishing the applicant's, the applicant's father's, the applicant's step-mother's or the applicant's mother's income and expenses and assets and liabilities to establish that were the applicant to reside abroad, her father, her step-mother and/or her mother would experience financial hardship. Although counsel submitted a letter confirming that the applicant is employed as a caregiver to three children, the letter does not provide any financial information about the position. Alternatively, the record does not establish that the applicant would be unable to obtain gainful employment in El Salvador that would permit her to assist her parents and step-mother as needed. 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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant has thus not established that her father, mother or step-mother would experience extreme hardship were they to remain in the United States while the applicant relocates abroad due to her inadmissibility.

In regard to relocating abroad to reside with the applicant as a result of her inadmissibility, the applicant's U.S. citizen father, in his April 28, 2009 affidavit, references the problematic country conditions in El Salvador, including gang activity, crime and violence. However, the applicant has not submitted any supporting documentation to establish that her father or mother, both born in El Salvador, or her step-mother specifically would experience extreme hardship were they to relocate to El Salvador to reside with the applicant as a result of her inadmissibility. Nor does counsel address this criterion in response to our RFE. The applicant has thus not established that her mother, father, or step-mother would experience extreme hardship were they to relocate abroad to reside with the applicant.

The record, reviewed in its entirety, does not support a finding that the applicant's U.S. citizen father or step-mother or lawful permanent resident mother will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a son or daughter is removed from the United States or is refused admission. There is no documentation establishing that the applicant's qualifying relatives' hardships are any different from other families separated as a result of immigration violations. Although we are not insensitive to the applicant's qualifying relatives' situation, the record does not establish that the hardships they would face rise to the level of "extreme" as contemplated by statute and case law.

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NON-PRECEDENT DECISION

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.