



U.S. Citizenship
and Immigration
Services

(b)(6)



Date **MAY 27 2015**

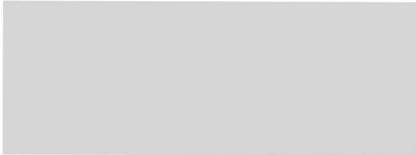
FILE #: [REDACTED]

APPLICATION 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:



INSTRUCTIONS:

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 Kendall Field Office Director, Miami, Florida, 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 Cuba 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 or other benefit under the Act through fraud or a material misrepresentation. The applicant filed an application for adjustment of status to that of a lawful permanent resident under Section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility, and the application was denied accordingly. See *Decision of the Field Office Director* dated September 9, 2014.

In the Notice of Appeal (Form I-290B), the applicant contends that her spouse would suffer emotional and financial hardships if she is unable to remain in the United States. The record contains statements from the applicant and her spouse, a mental health evaluation for the spouse, financial documentation, country information for Cuba, letters of support for the applicant and her spouse, and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). The entire record was reviewed and considered in rendering a decision on 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 that:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 on October 30, 2011, the applicant attempted to obtain a Cuban Medical Professional Parole to the United States at the U.S. embassy in Ecuador by stating that she was conscripted by the government of Cuba to practice medicine in Ecuador. At that time, however, the

applicant was not in fact working as medical professional in Ecuador, but was there as a tourist. The application was denied on December 15, 2011. Based on this information, the field office director determined that the applicant was inadmissible for misrepresentation under Section 212(a)(6)(C) of the Act. The applicant has not contested the finding of inadmissibility, asserting that her goal was always to live in the United States. On June 28, 2012, the applicant applied for admission to the United States at the [REDACTED] Texas, Port of Entry, was issued a Notice to Appear, and paroled into the United States for proceedings pursuant to Section 240 of the Act.

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 spouse is the only qualifying relative in this case. 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).

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. *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 and her spouse state that if the applicant returns to Cuba it will affect her spouse emotionally and that his stress is causing depression and insomnia, for which he is being treated by a psychiatrist. They state that it will be difficult to be apart because they have been partners since first meeting in 1995. Letters of support from friends state that separation from the applicant would be difficult emotionally for her spouse, and the spouse also states he is concerned over problems the applicant would face if she were to return to Cuba.

A mental health evaluation, dated February 19, 2014, diagnosed the spouse with major depressive affective disorder for which he was prescribed medication, including Prozac and Temazepam. The report indicates that the spouse was in good health and reports a good economic situation, but had come for an initial consultation complaining of feeling depressed, having a lack of motivation to do chores, being anxious, having insomnia, and crying easily. The evaluation states that the spouse reports that his symptoms began when the applicant was denied U.S. residence and have since worsened and that he states he was having thoughts of killing himself. It states he was also increasing his alcohol intake because he cannot go to Cuba to visit his children. Although the evaluation notes that the applicant’s spouse reports having thoughts of killing himself, it describes the spouse’s condition as moderate and indicates at two places that he does not have suicidal thoughts.

While the assertions made regarding the spouse’s emotional hardships and the mental health report establishes the applicant’s spouse would experience some psychological hardship due to separation, they do not provide sufficient detail to establish that the hardship is beyond that normally experienced when a spouse is found to be inadmissible. We note inconsistencies related to the claim of emotional hardship. Although the applicant’s spouse asserts he has suicidal thoughts, the mental

health evaluation at two places indicates he does not have suicidal thoughts. The evaluation also indicates the spouse is increasing alcohol intake because he cannot go to Cuba to see his children and states that he has three children, whereas statements by the applicant and her spouse only mention one child.

The applicant also asserts that her spouse will suffer financially because his wages are not enough to meet their financial commitments. The spouse states that the applicant earns 65 percent of their income. He states that alone he could not afford payment of their debts or everyday expenses such as food and rent while also assuming payment of student loans for the applicant. The applicant further states that their daughter in Cuba is in the process of joining them in the United States and it would be difficult for her spouse to assume sole responsibility for the daughter's development and bear all the economic expenses when she arrives.

Although financial documentation submitted to the record shows that loss of the applicant's income would affect her spouse, there is insufficient evidence to establish that the spouse would be unable to meet his financial obligations or that he would experience a financial hardship which rises above what is common. The record indicates that the applicant's spouse is college-educated, letters of support and the mental health evaluation refer to him as a professional, and the marriage certificate indicates he is a mechanical engineer. However there is no explanation of why, given his apparent credentials, the applicant's spouse would be unable to obtain higher income in absence of the applicant. Further, 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).

We find that record fails to establish that the applicant's spouse will suffer extreme hardship as a consequence of being separated from the applicant. It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would experience hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer hardship beyond the common results of removal upon separation from the applicant.

We also find the record fails to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Cuba, his native country. The applicant asserts that they will face a deprivation of liberty, trouble finding jobs, a life of poverty, and harassment by the government. She asserts that a medical professional leaving the county is considered a betrayal, so she would face reprisals if she returned to Cuba, where she would have no political and social freedoms. She asserts that she and her spouse would not be able to work in the professions they have studied and that since jobs in Cuba do not pay well, she and her spouse would live in poverty. The applicant's spouse also asserts that the applicant could never practice her profession again if she returned to Cuba and that she would be obliged to remain under the regime from which she fled. She also indicates that her spouse has fled the country, but provides no further detail of these circumstances.

The record contains the 2013 U.S. Department of State Country Reports on Human Rights Practices for Cuba that describes general conditions including restrictions on individual liberties and government surveillance, and states that senior medical personnel are limited in their ability to migrate. Although the report indicates that there are restrictions on travel and that the law provides for imprisonment for unauthorized departures, the record does not indicate that the applicant violated laws when she departed the country. The report indicates that the average wage does not provide a reasonable standard of living, however a lower standard of living alone is not sufficient to establish extreme hardship. Although we recognize the limitations on personal liberty and earnings, the applicant has not established that these conditions would result in extreme hardship to her spouse, who emigrated from Cuba to the United States in 2012 and, according to the applicant, has family in Cuba but no family in the United States.

The applicant asserts that in Cuba her spouse will have limited access to the medication he requires to deal with psychological conditions and symptoms and that he would be unable to afford treatments. The record does not establish, however, that the applicant's spouse would require medical and therapeutic services if he returned to Cuba, as it documents that the applicant's spouse sought mental health treatment as a result of concerns regarding his potential separation from the applicant, and his feelings of depression were apparently exacerbated because he is unable to visit his children who are in Cuba. The record therefore fails to demonstrate that upon relocation to Cuba he would need to seek mental health treatment.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the applicant has failed to establish extreme hardship to a qualifying relative 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 proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

ORDER: The appeal is dismissed.