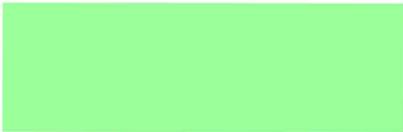


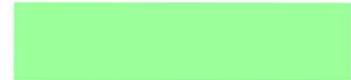


(b)(6)

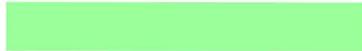


Date: JUN 25 2013

Office: TAMPA



IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Tampa, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved.

The record reflects that 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, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. The applicant does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility to reside in the United States with his U.S. citizen spouse and step-children, born in 1997 and 1998.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated August 18, 2011.

On appeal, counsel for the applicant submits a memorandum of law and documentation regarding country conditions in Cuba. 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.

....

(ii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

(1) 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 indicates that the applicant was interviewed by and immigration officer concerning a request for parole into the United States while he was detained at Guantanamo Bay, Cuba in September 1995. He was denied parole because he was found to have misrepresented his relationship to the principal parole applicant, who he states was his brother-in-law, as well as having failed to disclose that he had been in prison in Cuba. The applicant was therefore found to be inadmissible under section 212(a)(6)(C)(i) of the Act for seeking an immigration benefit 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 or the children 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).

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.

The applicant asserts that his wife would suffer emotional and financial hardship were she to remain in the United States while the applicant relocates abroad due to his inadmissibility. To begin, the applicant states that he and his wife have a strong and loving relationship and it would be devastating if he were not allowed to remain with his wife and children as a family in the United States. The applicant further details that his wife lost her job as a property manager in 2009 and has exhausted her unemployment benefits, and, as a result their home has been foreclosed, their car was repossessed, and she had to file for bankruptcy. The applicant contends that his income as a handyman is barely sufficient to cover the family’s expenses, but were he able to legalize his status, he would be able to obtain a better job in construction and would be able to take care of his family. Letter from [REDACTED] dated July 6, 2010. A letter has also been provided from the applicant’s spouse referencing the emotional hardship she would experience were she to be separated from her husband. Letter from [REDACTED] dated June 2010. On appeal, counsel further notes that due to financial constraints and current laws, the applicant’s spouse and children would not be able to travel to Cuba regularly to visit the applicant. Even if they were able to travel to Cuba, counsel references the severe restrictions on freedom of movement within the country and the inability oftentimes to obtain exit permits. See *Memorandum of Law*.

Evidence of the applicant’s spouse’s unemployment, bankruptcy and foreclosure has been submitted. In addition, the record establishes that the applicant has been gainfully self-employed as a handyman since 2001. See *Form G-325A, Biographic Information*, dated May 4, 2009. Moreover, the AAO notes the difficulties inherent in traveling to Cuba regularly to visit the applicant, including the need

for a license<sup>1</sup> and the possibility of encountering difficulties when leaving Cuba as the applicant's spouse was born in Cuba. As noted by the U.S. Department of State,

Cuba is an authoritarian state that routinely employs repressive methods against internal dissent and monitors and responds to perceived threats to its authority. These methods include intense physical and electronic surveillance, as well as detention and interrogation of both Cuban citizens and foreign visitors. U.S. citizens visiting Cuba should be aware that any on-island activities could be subject to surveillance, and their contacts with Cuban citizens monitored closely. Human rights conditions in Cuba remain poor, as the Cuban government limits fundamental freedoms, including freedom of expression and peaceful assembly.

The Government of Cuba does not recognize the U.S. nationality of U.S. citizens who are born in Cuba or the U.S. nationality of those born in the U.S. to Cuban parents.

These individuals will be treated solely as Cuban citizens and may be subject to a range of restrictions and obligations, including military service. The Cuban government may require U.S.-Cuban dual citizens ("dual nationals") to enter and depart Cuba using a Cuban passport. Using a Cuban passport for this purpose does not jeopardize one's U.S. citizenship; however, such persons must use their U.S. passports to enter and depart the United States. Although the Cuban government lifted its exit permission requirement for most Cubans in January 2013, in some instances, dual nationals may be required to obtain exit permission from the Cuban government in order to return to the United States. There have been cases of dual nationals being forced by the Cuban government to surrender their U.S. passports.

Dual nationals should be especially wary of any attempt by Cuban authorities to compel them to sign "repatriation" documents. The Government of Cuba views a declaration of repatriation as a legal statement on the part of the dual national that she/he intends to resettle permanently in Cuba.

In several instances, the Government of Cuba has seized the U.S. passports of dual nationals signing declarations of repatriation and has denied these individuals permission to return to the United States.

*Country Specific Information-Cuba, U.S. Department of State, dated May 3, 2013. The record reflects that the cumulative effect of the emotional and financial hardship the applicant's spouse*

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<sup>1</sup> [http://www.treasury.gov/resource-center/sanctions/Programs/Documents/cuba\\_tr\\_app.pdf](http://www.treasury.gov/resource-center/sanctions/Programs/Documents/cuba_tr_app.pdf)

would experience were her husband to relocate abroad while she remains in the United States rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, the applicant's spouse would suffer extreme hardship if she remains in the United States.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. The record indicates that the applicant's spouse became a naturalized citizen almost fourteen years ago. Her children were born in the United States. Further, the U.S. Department of State confirms that Cuba is an authoritarian state with poor human rights conditions. Finally, counsel references that the applicant's spouse's immediate family all reside in the United States.

The record establishes that the applicant's step-children, currently in their late teens, are fully integrated into the United States lifestyle and educational system. The Board of Immigration Appeals (BIA) found that a fifteen-year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the applicant's children at this stage of their education and social development and relocate to Cuba would constitute extreme hardship to him, and by extension, to the applicant's spouse, the only qualifying relative in this case. In addition, the record reflects that the applicant's spouse has extensive ties to the United States as she became a U.S. citizen more than a decade ago. Were she to relocate to Cuba to reside with the applicant, she would be relocating to a country with which she is no longer familiar. It has thus been established that the applicant's 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, the AAO finds 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). The AAO 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 step-children would face if the applicant were to relocate to Cuba, regardless of whether they accompanied the applicant or stayed in the United States, the applicant's community ties, employment in the United States, past home ownership, the apparent lack of a criminal record, support letters from friends, family and a previous employer and the passage of more than fifteen years since the applicant's fraud or willful misrepresentation. The unfavorable factors in this matter are the applicant's fraud or willful misrepresentation, periods of unlawful presence and employment in the United States and the order of removal issued by the immigration judge in September 2011.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the I-601 waiver application approved.

**ORDER:** The appeal is sustained. The waiver application is approved.