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

U.S. Citizenship
and Immigration
Services

H5

FILE: [redacted] Office: KINGSTON, JAMAICA Date: OCT 06 2010

IN RE: Applicant: [redacted]

APPLICATION: Immigrant Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

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for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Kingston, Jamaica and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Jamaica 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 admission into the United States by fraud or willful misrepresentation. The applicant is engaged to a United States citizen and seeks 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 his fiancée.

The Officer-in-Charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer-in-Charge,* dated December 28, 2007.

On appeal, the applicant's fiancée states that she is appealing on the grounds of multiple extreme hardships. *Form I-290B, Notice of Appeal or Motion.*

In support of the waiver the record includes, but is not limited to, statements from the applicant's fiancée; a medical letter for the applicant's fiancée; documents pertaining to the applicant's fiancée's custody agreement for her child; travel receipts; a financial aid award letter; a property deed; telephone bills; and a Jamaican police clearance letter for the applicant. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (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 reflects that on July 16, 2003 the applicant attempted to gain admission to the United States by presenting a fraudulent visa at the airport in Atlanta, Georgia. *Form I-275, Withdrawal of Application for Admission/Consular Notification; Consular Memorandum, Embassy of the United States of America, Kingston, Jamaica*, dated October 9, 2007; *Form I-867A, Record of Sworn Statement.* Based on his presentation of a fraudulent document at the port of entry, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

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

> (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.

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,

The AAO notes that if an alien seeking a K-1 nonimmigrant visa is inadmissible, the alien's ability to seek a waiver of inadmissibility is governed by 8 C.F.R. § 212.7(a), which provides, in pertinent part:

> (a) *General*—(1) *Filing procedure*—(i) *Immigrant visa or K nonimmigrant visa applicant.* An applicant for an immigrant visa or "K" nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

The AAO considers the applicant's fiancée to be a qualifying relative in this situation. In determining that a fiancée is equivalent to a spouse for purposes of the extreme hardship statute, the AAO relies on 22 C.F.R. § 41.81 which provides:

> § 41.81 Fiancé(e) or spouse of a U.S. citizen and derivative children.
>
> . . .
>
> (a) Fiance (e). An alien is classifiable as a nonimmigrant fiancé(e) under INA 101(a)(15)(K)(i) when all of the following requirements are met:
>
> . . .
>
> (3) The alien otherwise has met all applicable requirements in order to receive a nonimmigrant visa, *including the requirements of paragraph (d)* of this section.
>
> . . .
>
> (d) *Eligibility as an immigrant required.* The consular officer, insofar as is practicable, must determine the eligibility of an alien to receive a nonimmigrant visa under

> paragraphs (a), (b) or (c) of this section *as if the alien were an applicant for an immigrant visa*, except that the alien must be exempt from the vaccination requirement of INA 212(a)(1) and the labor certification requirement of INA 212(a)(5).

A section 212(i) waiver is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. As mentioned previously, the AAO considers the fiancée as an equivalent to a spouse in this section. 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme

hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

If the applicant's fiancée joins the applicant in Jamaica, the applicant needs to establish that his fiancée will suffer extreme hardship. The applicant's fiancée is a native of Jamaica. *Naturalization certificate*. She naturalized in 2001. *Id.* The record does not address whether she currently has any family ties in Jamaica. The applicant's fiancée notes that she is unable to relocate to Jamaica for any extended period of time because she has a child from a previous relationship with whom she shares custody rights. *Statement from the applicant's fiancée*, undated. She states that the father of her child would never agree to have their child moved out of her current environment. *Id.* The record includes court documentation which stipulates the custody agreement between the applicant's fiancée and the father of her child. *Stipulation for Custody, Court of Common Pleas, Philadelphia County, Family Division*, dated September 17, 2003. The agreement specifically states that while the applicant's fiancée has primary physical custody of the child, the father shall have partial custody of the child every other weekend and shall share legal custody in that he and the applicant's fiancée shall have equal decision-making rights regarding issues concerning the health, education and welfare of the child. *Id.* Medical documentation included in the record notes that the applicant's fiancée has been diagnosed as having hypertension and that this causes her emotional health to be unstable and fluctuations in her pressure. *Statement from* [redacted], dated January 18, 2008. The AAO notes the applicant's fiancée is pursuing her Masters in Business Administration (*see Financial Aid Award Letter*, dated January 14, 2008) and acknowledges that relocating to Jamaica would disrupt her academic studies. Regarding financial hardships, the applicant's fiancée notes that it would not be easy to repay her student loans using Jamaican

currency given the difficulties in finding a job due to the economic situation in Jamaica. *Statement from the applicant's fiancée*, undated. While the record documents the student loans for the applicant's fiancée (*see Financial Aid Award Letter*, dated January 14, 2008), it notes that the record fails to include documentation, such as published country conditions reports, regarding the economy and availability of employment in Jamaica. Going on record without supporting documentary evidence will not meet the burden of proof of 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)). Although the applicant's fiancée has not documented financial hardship if she were to relocate to Jamaica, when looking at the aforementioned factors, particularly the length of time the applicant's fiancée has resided in the United States, her medical issues, the disruption in her studies and the documentation showing she has primary custody of a child from a previous relationship who is unable to relocate to Jamaica, the AAO finds that the applicant has demonstrated extreme hardship to his fiancée if she were to reside in Jamaica.

If the applicant's fiancée resides in the United States, the applicant needs to establish that his fiancée will suffer extreme hardship. As previously noted, the applicant's fiancée is a native of Jamaica. *Naturalization certificate*. She naturalized in 2001. *Id.* The record does not address whether she currently has any family ties in Jamaica. The applicant's fiancée suffers from stress and hypertension due to being separated from the applicant. *Statement from the applicant's fiancée*, undated. Her physician notes that she suffers from hypertension and has incurred extra stress by not having the applicant available in the United States for support. *Statement from* [redacted] dated January 18, 2008. He further notes that this causes fluctuations in her pressure as well as causing her emotional health to be unstable. *Id.* The applicant's fiancée notes that being separated from the applicant is causing her to financially suffer, as she has to incur additional communication and travel expenses. *Statement from the applicant's fiancée*, undated. The record includes travel receipts for the applicant's fiancée, documenting her travel expenses. *See travel receipts*. The record also includes several telephone bills showing her communication expenses. *Telephone bills*. In addition to these expenses, the AAO also observes that the record includes a Financial Aid Award Letter for the applicant's fiancée showing her student loan totals for 2007-2008 to be [redacted] *Financial Aid Award Letter*, dated January 14, 2008. The AAO also acknowledges that the applicant's fiancée has primary custody of her child from a previous relationship. *Stipulation for Custody, Court of Common Pleas,* [redacted] dated September 17, 2003. While the record does not address whether the father of her child contributes to her child's financial welfare, the AAO acknowledges the added expenses of being a single parent. When looking at the aforementioned factors, particularly the documented health conditions of the applicant's fiancée, her documented financial expenses in the United States, as well as having primary custody of a child from a previous relationship, the AAO finds that the applicant has demonstrated extreme hardship to his fiancée if she were to reside in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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).

The adverse factors in the present case are the applicant's misrepresentation for which he now seeks a waiver and his removal from the United States. The favorable and mitigating factors are his United States citizen fiancée, his United States citizen stepchild, the extreme hardship to his fiancée if he were refused admission and his supportive relationship with his fiancée as documented in the record.

The AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.