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

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U.S. Citizenship and Immigration Services

[redacted]

H5

DATE: APR 25 2012 Office: KINGSTON, JAMAICA FILE: [redacted]

IN RE: [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]

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director (FOD), Kingston, Jamaica and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 sought to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant 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 U.S. citizen spouse and lawful permanent resident daughter.

The FOD concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated November 25, 2009.

On appeal, counsel asserts that the FOD erred in law by not giving sufficient weight to the statement of the applicant's spouse and submits additional evidence for consideration.

The evidence of record includes, but is not limited to: counsel's brief; statements from the applicant's spouse and his daughter; a psychological evaluation of the applicant's spouse; letters from the healthcare professionals treating the applicant's spouse; character letters for the applicant; a financial document; and identification and relationship documents. The entire record was reviewed and all relevant evidence considered in reaching 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.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (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.

In the present case, the record indicates that on April 26, 2002, the applicant sought admission to the United States by presenting a fraudulent passport in the name of [redacted] The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to procure admission to the United States through fraud or misrepresentation. The applicant does not contest his inadmissibility.

The applicant's qualifying relative is his spouse, who is a U.S. citizen. The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

The AAO now turns to the question of whether the applicant in the present case has established that his qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship whether she remains in the United States or relocates to Jamaica. Counsel states that the applicant's spouse feels depressed, hopeless and apathetic as a result of the applicant's absence. He adds that the applicant's spouse takes medication for herpes, syphilis, and a peptic ulcer, and these medical conditions are exacerbated by the stress resulting from the applicant's absence. Counsel states that the applicant's spouse is responsible for the applicant's daughter, a legal permanent resident of the United States. Counsel further states that the applicant's spouse has established strong community ties in the United States for over 13 years, has two daughters here, and has an established employment history. Counsel asserts that the medical care the applicant's spouse requires is not readily available or suitable in Jamaica.

In her December 10, 2009 statement, the applicant's spouse states that living apart from the applicant is very stressful and that she is "physically, emotionally, and financially devastated." She states that she has contemplated committing suicide and is having a mental breakdown. She states that taking care of the applicant's daughter is a difficult and challenging task. She further states that she is unable to perform her duties as a nurse's assistant, having difficulty staying focused, unable to control her emotions, and unable to recall to which patients she administered medications. She states that her manager does not think she is capable enough to provide the care and assistance that patients need. She also states that it is difficult to eat and when she does, she vomits. She also states that she is going insane and cannot get the thoughts of committing suicide out of her head.

In her April 15, 2009 statement, the applicant's spouse states she is "working two jobs" and if she were to relocate to Jamaica, she would not be able to find employment and provide for her family. The record contains a copy of a [redacted] pay statement dated December 9, 2009 indicating that the applicant's spouse earns $10.67 per hour and $16.64 per hour for overtime hours worked.

Medical documentation submitted on appeal confirms that the applicant's spouse is taking suppressive medications for herpes genitalis and syphilis, and that the applicant's spouse's frequent herpes breakouts are brought on by the emotional stress resulting from her separation from the applicant. Moreover, the applicant's spouse's peptic ulcer disease is being treated with a medication, and a doctor recommends a follow-up test.

The record contains a psychological evaluation of the applicant by [redacted] who interviewed the applicant's spouse on December 14, 2009 and administered psychological testing. The applicant's spouse reported to him that she dated the applicant for three years before marrying him in 2007; was raped by her stepfather when she was 12 years old; became a caretaker of her younger four siblings by age nine; has disturbed sleep, a diminished appetite, and has lost 10 pounds since her separation from the applicant; and "has experienced on more than one occasion hearing inarticulate voices calling her name." According to [redacted] the applicant's spouse "is a very depressed and anxious woman who may under stress experience brief psychotic episodes." He believes the stress she experiences as a result of the applicant's absence plays a role in the exacerbation of her medical conditions. He concludes that her continued separation from the applicant will cause her depression to worsen "until it may eventuate in a suicide attempt."

The summary of her psychological test results includes a general disclaimer that the report cannot be considered definitive and should be evaluated with additional clinical data. Referring to the applicant's spouse, the report indicates her "response style may indicate a tendency to magnify illness" and "the interpretations should be read with this in mind." The report further states, "[o]n the basis of the test data, it may be assumed that the patient is experiencing a severe mental disorder; further professional observation and inpatient care may be appropriate." The

report suggests the following diagnostic categories: Schizoaffective Disorder; Somatization Disorder; Adjustment Disorder with mixed Anxiety and Depressed Mood; and Dependent Personality Disorder with Borderline Personality Features. Treatment in the form of "targeted psychopharmacologic mediations" and therapy is advised.

In her undated letter, the applicant's daughter states that she and the applicant have a close relationship and being away from him emotionally affects her. She states that the applicant would be able to send her to college and things would be better for her financially and emotionally if he was with her.

Having reviewed the preceding evidence, the AAO finds it to establish that the applicant's spouse would experience extreme hardship if the waiver application is denied and she remains in the United States. The record indicates that the applicant's spouse has serious medical conditions for which she is being treated and the stress of separation from the applicant exacerbates her conditions. The evidence in the record also demonstrates that her psychological and emotional condition has worsened as a result of their separation, limiting her ability to function without the applicant. Considering her medical and psychological hardship in the aggregate, the applicant's spouse's hardship in the United States is extreme.

The record, however, does not establish that the applicant's spouse would experience extreme hardship if she relocates to Jamaica. The applicant's spouse states that moving to Jamaica would be financially difficult, without specifying the nature and scope of their difficulties. The record fails to provide documentary evidence to establish that the applicant's spouse is unable to obtain employment in Jamaica. The record also lacks evidence demonstrating whether the applicant is employed in Jamaica and their household expenses. Moreover, the record indicates that the applicant's spouse is from Jamaica and has family members there, though the extent of her family ties is unclear. Counsel asserts that the applicant's spouse will not receive the medical treatment she requires in Jamaica. However, the record lacks evidence to corroborate counsel's assertion that the medical treatment that the applicant's spouse needs is unavailable in Jamaica. Without documentary evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record also lacks evidence corroborating the applicant's spouse's assertion that she financially assists her daughter. The assertions of the applicant's spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions are insufficient proof of hardship. *See Matter of Kwan,* 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

The applicant has not established eligibility for a waiver of inadmissibility under section 212(i) of the Act. Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether he 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.