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

U.S. Citizenship and Immigration Services

[redacted]

#5

Date: AUG 2 1 2012 Office: NEWARK, NEW JERSEY FILE: [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]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Newark, New Jersey. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted and the previous decisions of the Field Office Director and the AAO will be affirmed.

The applicant is a native and citizen of Jamaica who on February 25, 1999, filed a Petition to Remove the Conditions of Residence (Form I-751) with a forged signature for his ex-wife. On February 27, 2006, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On May 23, 2008, the Field Office Director denied the applicant's Form I-601, finding the applicant had failed to demonstrate extreme hardship to a qualifying relative. *Decision of the Field Office Director*, dated May 23, 2008. On June 24, 2008, the applicant, through counsel, filed an appeal of the Field Office Director's decision with the AAO. On October 4, 2010, the AAO dismissed the applicant's appeal. On November 3, 2010, the applicant, through counsel, filed a motion to reopen the AAO's decision.

In its October 4, 2010 decision, the AAO found that the applicant had failed to demonstrate extreme hardship to a qualifying relative under section 212(i) of the Act. On motion, the applicant, through counsel, claims that the applicant's wife will suffer extreme hardship if the applicant returns to Jamaica and submits new evidence to satisfy his burden of proof. According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The record in support of the applicant's motion includes, but is not limited to, counsel's brief, a statement from the applicant's wife, letters of support, medical documents for the applicant and his wife, a mental-health evaluation for the applicant's wife, household bills, photographs, and country-conditions documents on Jamaica. The entire record was reviewed and all relevant evidence considered in rendering this decision.

As the applicant has submitted new documentary evidence to support his claim, the motion to reopen will be granted.

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

> (i) In general.-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.
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> . . . .
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> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

> (i) (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 immigrant 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.

A waiver of inadmissibility under section 212(i) of the Act is dependent first 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. Hardship to the applicant, his son, or his stepchildren can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 United States Citizenship and Immigration Services (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 Board of Immigration Appeals (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 the applicant entered the United States on December 2, 1993 on a B-1 nonimmigrant visa with authorization to remain until January 1, 1994. On March 6, 1997, the applicant became a conditional lawful permanent resident. However, on March 6, 1999, his resident status was terminated after the District Director, Detroit, Michigan, determined that the applicant had filed a Form I-751 with a forged signature for his former wife.

Counsel, in her brief in support of the applicant's motion to reopen, claims that the applicant "has always maintained that he did not forge his ex-wife's signature," and therefore is not inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO finds counsel's contention that the applicant is not inadmissible to the United States for attempting to procure an immigration benefit through fraud or the willful misrepresentation of a material fact to be unpersuasive. The AAO observes that in waiver proceedings the burden of proof is on the applicant to establish admissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. As noted above, the record establishes that the applicant submitted a Form I-751 with a forged signature for his ex-wife, [redacted] An investigation conducted by the Forensic Document Laboratory, U.S. Department of Justice, determined that [redacted] did not sign the Form I-751. Additionally, in a sworn statement dated July 10, 2002, [redacted] stated that the signature on the Form I-751 was not hers. The AAO notes that the applicant has provided no evidence to show that he had no knowledge that he was submitting the Form I-751 with a forged signature. Given that the applicant failed to provide evidence to support his claim that he did not forge his ex-wife's signature or that he was unaware of the forgery, the AAO finds that the applicant's

misrepresentation was willful. Accordingly, the AAO finds that the applicant attempted to procure an immigration benefit through fraud, and that he is inadmissible under section 212(a)(6)(C)(i) of the Act.

The record contains references to hardship the applicant's son, stepchildren, and grandchild 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 son and stepchildren will not be separately considered, except as it may affect the applicant's spouse.

Counsel states that if the applicant's wife joins the applicant in Jamaica, given her age and health, she will have a difficult time finding employment. Counsel contends that not only will the applicant's wife need to leave her job in the United States, "the money and time spent on obtaining her college degree will be wasted." Additionally, because of his age and lack of work experience in Jamaica, she claims that the applicant also will have difficulty finding employment in Jamaica. Further, Jamaica has a high rate of unemployment. Moreover, medical documentation in the record establishes that the applicant's wife sustained a back injury in 2002, from which she still suffers episodic back pains that leave her bedridden. Counsel asserts the applicant's wife will not receive adequate medical care in Jamaica for her health conditions and that the applicant and his wife have state-provided health care in the United States.

In a statement dated October 27, 2010, the applicant's wife states that because of health and financial constraints, she will not be able visit her family in the United States if she joins the applicant in Jamaica. According to counsel, all of the applicant's wife's immediate family resides in the United States. She claims that the applicant's stepchildren "share a very close, unique bond" with the applicant, and they will suffer if he returns to Jamaica; this will "intrinsically affect" the applicant's wife. Additionally, counsel states the applicant and his wife are very active in their church. Further, counsel states that the country conditions in Jamaica, including the high rate of crime, will cause extreme hardship to the applicant's wife. Country-conditions documents were submitted in support of counsel's claims.

The AAO acknowledges that the applicant's wife is a U.S. citizen and that relocation abroad would involve some hardship. The record contains country-conditions documents on Jamaica; however, these documents do not establish that the applicant's wife would be unable to obtain employment upon relocation that would allow her to use the skills she has acquired in the United States. Additionally, though the applicant's security concerns about Jamaica are corroborated by country-conditions documents, without more these documents alone do not support a finding of hardship to the applicant's wife, should she join the applicant in Jamaica. Further, the record does not establish that the applicant's wife cannot receive treatment for her medical condition in Jamaica or that she has to remain in the United States to receive treatment. Regarding the hardship that the applicant's stepdaughters may experience, they are not qualifying relatives under the Act, and the applicant has not shown that hardship to his stepdaughters will elevate his wife's challenges to an extreme level. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Jamaica.

In addition, the record fails to establish extreme hardship to the applicant's wife if she remains in the United States. In statements in support of the applicant's motion to reopen, the applicant's stepdaughters claim that their mother would suffer emotionally and financially if she were separated from the applicant. In a mental-health evaluation dated October 26, 2010, licensed social worker [redacted] states the applicant's wife is suffering from a depressive episode, and that if the applicant returns to Jamaica, she may suffer a breakdown. She also reports that the applicant's wife is worried about what will happen to the applicant in Jamaica. The applicant's wife is concerned that the applicant will not receive proper healthcare in Jamaica for his medical conditions. Medical documentation in the record establishes that the applicant suffers from diabetes, hypertension, peptic ulcer disease, cardiac artery disease, and dyslipidemia. The AAO notes that the applicant's wife reported to [redacted] that the applicant suffers from depression; however, the submitted medical documentation does not indicate that the applicant suffers from depression.

The applicant's wife states she suffers from a debilitating back condition, which is agitated by stress and being overweight, and when she has back pains, the applicant takes care of her. Counsel states that because of her back condition, the applicant drives his wife to and from work and takes care of the household responsibilities. She states that without the applicant's assistance, the applicant's wife will be unable to continue her employment. The applicant's wife states while she works as a director in a child development center, the applicant runs their heating and cooling business, and he is the sole technician. Counsel states that without the applicant, the business would have to cease operations. The applicant's wife states that she works ten months, has two months off, and during those two months, they rely on the applicant's income. She claims that their monthly bills range between $2,800 to $3,200. The applicant's wife states that without the applicant's income, she would be "completely devastated."

In a letter dated October 27, 2010, the applicant's son states the applicant is a part of his son's support system since he was diagnosed with autism. Documentation in the record establishes that the applicant's grandson was diagnosed with autistic spectrum disorder. The applicant's son claims that the applicant plays a significant role in his son's development and without his support, it would "dramatically affect" his son's development. Additionally, the applicant's stepdaughters state that their children look up to the applicant as their grandfather.

The AAO acknowledges that the applicant's wife may suffer emotional difficulties in being separated from the applicant. While it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished his wife's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. Though the applicant's wife refers to financial difficulties, the record does not contain evidence corroborating the applicant's wife's statement that she will be unable to support herself in the applicant's absence. Additionally, the applicant has not distinguished his wife's financial challenges from those commonly experienced when a family member remains in the United States. The AAO also notes that that there is no evidence to suggest that the applicant's spouse would be unable to receive support from her family for her medical condition. Additionally, the AAO notes that the applicant's grandchildren may suffer some hardship in being separated from the applicant; however, the applicant has not shown that their hardship

will elevate his wife's challenges to an extreme level. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds 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. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the AAO's dismissal of the appeal is upheld and the underlying waiver application is denied.

ORDER: The motion is granted and the previous decisions of the Field Office Director and the AAO are affirmed. The application is denied.