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

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[redacted]

Date: FEB 17 2012

Office: CALIFORNIA SERVICE CENTER

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]

[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,

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center. The applicant filed an appeal of the director's decision with the Administrative Appeals Office (AAO). The AAO dismissed the appeal as moot. The AAO reopened the matter *sua sponte* based on new evidence that was not part of the record of proceeding previously before the AAO. The AAO requested that the applicant provide additional evidence to supplement the record in order to continue processing the appeal. On January 9, 2012, the applicant provided additional evidence. Upon review, 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 seeking to procure admission into the United States by willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and reside with her U.S. citizen husband.

The director concluded that the applicant 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 Director*, dated July 28, 2006.

On appeal, counsel for the applicant asserts that the applicant's husband will suffer hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel*, received August 21, 2006; *Response to Request for Evidence*, dated January 4, 2012.

The record contains, but is not limited to: briefs from counsel; a psychosocial history report on the applicant's husband; statements from the applicant and her husband; documentation in connection with the applicant's and her husband's financial status; and documentation regarding the applicant's criminal conviction. The entire record was considered in rendering this decision.

In a request for evidence, the AAO observed that the record indicated that on or about June 18, 2008 the applicant was charged with an offense relating to a controlled substance, marijuana, raising the question of whether the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving a controlled substance. In response, the applicant provided documentation to show that she was convicted for disorderly conduct under New York Penal Code § 240.20 stemming from an arrest on June 16, 2008. None of the original charges listed in this documentation specifically relate to marijuana, but as we dismiss the appeal on another basis, we will not further discuss whether the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

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

> 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.

On April 3, 1998 the applicant attempted to enter the United States pursuant to the Visa Waiver Program using a United Kingdom passport with her photograph substituted for that of the true owner. She was refused admission and permitted to depart the United States. The applicant's true identity was unknown to U.S. Citizenship and Immigration Services (USCIS, formerly the Immigration and Naturalization Service) at the time of her attempted entry and departure. Accordingly, the applicant requires a waiver of inadmissibility under section 212(i) of the 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, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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-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 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).

The applicant submits a psychosocial history report for her husband, dated June 8, 2009. This detailed 42 page document constitutes the most recent information regarding the applicant's husband's circumstances. Other documentation in the record concerning the applicant's husband's challenges and relationship with the applicant is dated August 2006 or earlier, and the psychosocial history report is deemed the most reliable evidence of his present condition. The psychosocial history report reflects that the applicant and her husband do not have an ongoing marital relationship. In different sections of the report, the applicant's husband's relationship status is identified as "separated", "single", and "not in a relationship." The report states that he is homeless and has been for 15 years, and also states that he lives alone. The report indicates that the applicant's husband was requested to leave his mother's home due to his substance abuse problems. The report lists the applicant's brother and sister as individuals to contact in the event of emergency.

Nowhere in the report is the applicant mentioned. As the report is a comprehensive evaluation of the applicant's husband's circumstances, the lack of inclusion of information about his relationship with the applicant supports that they are not living as a married couple and he does not depend on her for emotional or financial assistance. The psychosocial history report states that the applicant has no relatives from whom he receives support.

The report describes serious challenges faced by the applicant's husband, including an extensive history of alcohol and drug abuse, criminal activity and lengthy periods of incarceration, homelessness, and the need for long-term residential treatment. The record shows that the applicant's

husband faces substantial hardship. However, there is no evidence to demonstrate that he would be impacted by her departure from the United States. Accordingly, the applicant has not shown that denial of the present waiver application "would result in extreme hardship" to her husband, as required for a waiver under section 212(i) of the Act. Having found the applicant statutorily ineligible for a waiver under section 212(i) of the Act, no purpose would be served by assessing whether she has shown that she warrants a favorable exercise of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, 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 also bears the burden of showing that she warrants a favorable exercise of discretion. *Matter of Mendez-Moralez, supra.* In this case, the applicant has not met her burden to show that she merits approval of her application, and the appeal will be dismissed.

ORDER: The appeal is dismissed.