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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]

H5

Date: JAN 11 2012 Office: KINGSTON, JAMAICA 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 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,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Jamaica who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or the willful misrepresentation of a material fact. The applicant is married to a United States citizen and is the father of two children. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 spouse and children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated August 7, 2009.

On appeal, the applicant, through counsel, contends that United States Citizenship and Immigration Service (USCIS) "failed to give proper weight to the exceptional...and extreme hardship face[d] by the [applicant's] family." *Form I-290B*, dated September 2, 2009.

The record includes, but is not limited to, statements from the applicant and his wife, a psychological evaluation on the applicant's wife and daughter, school records for the applicant's daughter, pay stubs for the applicant's wife, household and utility bills, tax documents, and documents regarding the applicant's misrepresentation. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.
>
> . . . .
>
> (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 Attorney General [now the Secretary of Homeland Security, "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...

In the present case, the record indicates that on or about November 8, 2000, the applicant applied for a H2B nonimmigrant visa along with seventeen (17) other applicants. During the visa interviews, sixteen (16) of the applicants (one visa applicant did not appear for the interview), claimed that their visa applications were arranged by family or friends, and none claimed knowledge of the company that submitted their visa applications. However, none of the applicants could provide the names and contact information of the people who arranged their visa applications. The consular officer determined that none of the applicants were honest or forthcoming during their interviews.

On appeal, counsel claims that the applicant "did not intentionally commit immigration fraud. He responded to an add [sic] in the newspaper about coming to the USA to work. He had no knowledge fo [sic] fraud.

The AAO finds counsel's contention that the applicant is not inadmissible to the United States through the 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 on or about November 8, 2000, the applicant applied for an H2B nonimmigrant visa along with sixteen other applicants. During their visa interviews, the applicants stated their visa applications were arranged by family or friends. However, none of the applicants were able to provide names and contact information for the family or friends. Further, the AAO notes that the consular officer determined that none of the applicants were honest during their interviews. Additionally, the AAO notes that there is no evidence in the record that the applicant told the consular officer that he was responding to an ad in the newspaper about coming to the United States to work or that the applicant had no knowledge that he was applying for a fraudulent visa. Given the fact that the applicant failed to provide evidence to support his claim that he was unaware of the fraud, the AAO finds that the applicant's misrepresentation was willful. Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) for willfully misrepresenting a material fact in order to seek admission into the United States.

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 or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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 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.

On appeal, counsel states the applicant "has no consistent means of support" and "[t]o uproot the family will be disasterous." The AAO notes that other than counsel's statement, the applicant has not asserted that his wife will endure hardship should she relocate to Jamaica. In the absence of clear assertions from the applicant, the AAO may not speculate regarding challenges his wife will face outside the United States. The applicant bears the burden to show extreme hardship to his qualifying relative in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. In that the record does not include sufficient documentation of financial, medical, emotional or other types of hardship that the applicant's wife would experience if she joined the applicant in Jamaica, the AAO does not find the applicant to have established that his wife would suffer extreme hardship upon relocation.

In a statement dated October 10, 2008, the applicant states he wants "to be able to work [in the United States] to support [his] family financially, morally and emotionally." In a statement dated September 15, 2008, the applicant's wife states their "children need the emotional support that only a father can provide." In a psychological evaluation dated August 31, 2009, [redacted] reports that the applicant and his daughter "have a very special bond." Counsel states the applicant's "child is suffering from depression and anxiety." [redacted] states the applicant's daughter is sad. She reports that the applicant's daughter's symptoms include "having difficulties falling asleep," she "appears to be anxious," she is "eating more than usual," she "cries for no reason," and her "grades have recently dropped." The AAO acknowledges that the applicant's daughter may be suffering some hardship in being separated from the applicant; however, the applicant's daughter is not a qualifying relative, and the applicant has not shown that hardship to his daughter will elevate his wife's challenges to an extreme level. Additionally, [redacted] states the applicant's wife is depressed. She reports that the applicant's wife's symptoms include "poor sleeping and eating habits," "she has lost several pounds in the last two months," she is "experiencing mood swings and feeling anxious," she has "difficulties concentrating at work," and "she often cries for no reason." [redacted] states the applicant's wife and daughter "are suffering from symptoms of depression and anxiety." She claims that the applicant's "immigration status is posing a significant level of emotional hardship on the family's day-to-day functioning." The AAO notes the concerns of the applicant's wife and daughter.

The applicant's wife states if the applicant cannot join them in the United States, "a great financial and emotional burden will be placed on [their] family and specially [sic] [their] children." She states that she is "the only person able to work and take care of [her] two children." [redacted] indicates that the applicant's wife "has been employed as a home aide since 2007." The AAO notes that documentation in the record establishes that in 2007, the applicant's wife reported an income of $14,443, and in 2008, she reported an income of $14,039. *See U.S. Individual Income Tax Returns for 2007 and 2008.* The AAO notes the financial concerns of the applicant's wife.

The AAO acknowledges that the applicant's wife is suffering emotional and financial issues due to her separation from the applicant. The AAO finds that when the applicant's wife's emotional and financial issues are considered in combination with the normal hardships that result from separation of a spouse, the applicant has established that his wife would experience extreme hardship if she remained in the United States in his absence.

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.

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 appeal will be dismissed.

ORDER: The appeal is dismissed.