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

U.S. Citizenship and Immigration Services

[redacted]

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DATE: JUL 2 7 2012 OFFICE: NEW YORK, NY 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 PETITIONER:

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.

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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the District Director, New York, New York, 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 procuring admission into the United States by fraud or willfully misrepresenting a material fact. The applicant is married to a U.S. citizen, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so that she may live in the United States with her spouse.

In a decision dated June 4, 2010, the director determined the applicant had failed to establish that her U.S. citizen spouse would experience extreme hardship if she were denied admission into the United States. The waiver application was denied accordingly.

The applicant asserts on appeal that her husband would experience extreme emotional and financial hardship if she is denied admission into the United States. To support these assertions, the applicant submits financial evidence and a letter from the applicant's husband. The applicant indicates on her Form I-290B appeal notice that she will submit a brief or additional evidence within thirty days, however, no further evidence was received by the AAO. The entire record was reviewed and considered in rendering a decision on the appeal

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.

The record reflects that the applicant entered the United States in July 1999, by using a passport that belonged to another individual. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act, for procuring admission into the United States by willfully misrepresenting a material fact. The applicant does not contest her inadmissibility under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act states:

> (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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

The applicant's U.S. citizen husband is her qualifying relative under section 212(i) of the Act.

The applicant states on the Form I-290B, Notice of Appeal or Motion that if she is denied admission into the United States, her husband would experience mental hardship that could affect his well-being and his work as a public bus driver. She indicates further that her husband has child support, car payment, mortgage, and maintenance payment obligations, and that she assists him financially.

The applicant's husband states in a letter that he and the applicant have a loving relationship, they share financial responsibilities for their home, and he would be financially affected if the applicant departed the United States. He states that he has diabetes and high blood pressure, is on medication, needs rest and relaxation for his conditions, and that the applicant alleviates his stress by helping with chores. He indicates further that he would lose his job and health benefits if he moved with the applicant to Jamaica; he has no ties to Jamaica; he is 57 years old and would have difficulty adjusting to life and getting a job in Jamaica; he fears living in Jamaica due to the country's instability, poverty and violence.

Evidence in the record reflects the applicant's husband has been employed as a bus driver for the New York City Transit Authority since 2002, he earns over $59,000 a year, and that approximately $142 is garnished from his paychecks for child support payments. Home mortgage evidence reflects the applicant and her husband owe approximately $107,000 on their home, and their monthly payments are $760. A late-charge notice from a credit card company is also in the record.

Upon review, the AAO finds the evidence in the record fails to establish that the hardships faced by the applicant's husband, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship if he remains in the United States. The

record lacks evidence to establish that the applicant is employed and contributes financially to their household, or that her husband would suffer financial hardship if the applicant were denied admission into the United States. The record also lacks medical evidence to corroborate assertions that the applicant's husband suffers from diabetes and high blood pressure, and that his medical condition would be affected if the applicant were unable to remain in the United States. In addition, the evidence submitted fails to demonstrate that the applicant's husband would experience emotional hardship beyond that normally experienced upon the removal or inadmissibility of a family member, if the applicant is denied admission and he remains in the United States.

The cumulative evidence also fails to establish that the applicant's husband would experience hardship that rises above that normally experienced upon removal or inadmissibility if he moved with the applicant to Jamaica. Although evidence establishes the applicant's husband would leave his job of over ten years with the New York Transit Authority, the evidence submitted fails to corroborate claims that the applicant or her husband would be unable to find work in Jamaica, or that the applicant's husband would experience financial hardship beyond that normally experienced upon removal if he moved to Jamaica. In addition, the record contains no documentary evidence to establish the applicant's husband would experience medical or physical hardship in Jamaica. The applicant's husband indicates that he would be scared and uncomfortable in Jamaica because the country can be unstable; however no evidence was submitted to corroborate these assertions. Furthermore, it is noted that a U.S. Department of State country-conditions report emphasizes that crime and violence are serious problems in the areas of Kingston and Montego Bay. *See* http://travel.state.gov/travel/cis_pa_tw/cis/cis_1147.html. Evidence in the record reflects that the applicant is not from these areas, however; she is from St. Elizabeth, where no problems are noted.

As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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.