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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: APR 0 1 2014 Office: WEST PALM BEACH [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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, West Palm Beach, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Haiti 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 attempted to procure a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. The applicant does not contest this finding of inadmissibility. Rather, he 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.

The Field Office Director concluded that the applicant had 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. *See Decision of the Field Office Director,* dated June 17, 2013.

In support of the instant appeal, counsel for the applicant submits a brief. The entire record was reviewed and considered in rendering 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 that:

> 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 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.

In regard to the field office director's finding of inadmissibility for fraud or willful misrepresentation, the record establishes that the applicant attempted to enter the United States in 2000 by presenting a photo-substituted and altered French passport. The applicant is therefore inadmissible under section 212(a)(6(C)(i) of the Act, for fraud or willful misrepresentation.

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. The applicant's U.S. citizen spouse is the only

qualifying relative in this case. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver and U.S. Citizenship and Immigration Services 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 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1993), (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.

Counsel contends that the applicant's U.S. citizen spouse will suffer extreme hardship if she relocates to Haiti to reside with the applicant due to his inadmissibility. To begin, counsel maintains that the applicant's spouse would face dangers and terrors in Haiti, as Haiti is a place where kidnapping is rampant, medical care is almost non-existent, crime is a common occurrence and living conditions are bleak. The applicant's spouse explains that she and her husband lost a child in 2010 due to preterm labor, and a letter from her physician indicates she may experience complications in future pregnancies requiring close monitoring. Counsel further explains that the applicant's spouse visited Haiti with her husband in August 2012 and she experienced substandard living conditions while there, including the lack of basic sanitary plumbing, running water for drinking and cooking, and refrigeration for food, as well as an overwhelming mosquito population. Further, counsel notes that the applicant's spouse was born in the United States and has no ties to Haiti and were she to relocate abroad, she would not be familiar with the country, custom, culture and language. Finally, counsel states that the applicant's spouse wants to become a registered nurse but were she to relocate abroad, she would have to give up her future studies as she has no way to pay for schooling in Haiti and she does not speak the language. *See Brief in Support of Appeal,* dated July 15, 2013.

On August 13, 2013, the State Department updated its travel warning for Haiti with new information regarding crime levels and infrastructure problems. According to the most recent travel warning, "U.S. citizens have been victims of violent crime, including murder and kidnapping, predominately in the Port-au-Prince area." Despite the Haitian government's limited progress in arresting perpetrators last year, "kidnapping for ransom can affect anyone in Haiti, particularly those maintaining long-term residence in the country." Moreover, although fewer crimes have been reported outside the capital, the warning notes that "authorities' ability to respond to emergencies is limited and in some areas nonexistent." Additionally, the travel warning notes that "Haiti's infrastructure remains in poor condition and inadequate. Medical facilities, including ambulance services, are particularly weak. Some U.S. citizens . . . have been unable to find necessary medical care in Haiti and have had to arrange and pay for medical evacuation to the United States." *Travel Warning-Haiti, U.S. Department of State,* dated August 13, 2013.

Furthermore, former Department of Homeland Security (DHS) Secretary Janet Napolitano determined that TPS for certain Haitians was warranted because of the earthquake and aftershocks of

January 12, 2010, and extended this designation through July 22, 2014. The Secretary's decision to extend TPS noted that Haiti experienced "extensive damage to infrastructure, public health, agriculture, transportation, and educational facilities" as a result of the earthquake, and over one million Haitians "were left homeless and living in temporary camps." Political instability has impeded the reconstruction process. Food security continued to be a problem two years after the earthquake. Given the risk of contracting cholera, unsafe living conditions, damaged infrastructure, and the shortage of permanent shelter, the Secretary determined it is unsafe for Haitians currently in the United States with TPS to return to Haiti. *See* Notice of Extension of the Designation of Haiti for Temporary Protected Status, 77 Fed. Reg. 59943 (October 1, 2012). Considering the evidence of hardship in the aggregate, including continuing unstable conditions in Haiti following the 2010 earthquake, the AAO finds that the applicant's spouse would experience extreme hardship if she were to relocate to Haiti with the applicant.

Counsel contends that the applicant's U.S. citizen spouse will experience extreme hardship if she were to remain in the United States while the applicant relocates abroad as a result of his inadmissibility. To begin, counsel maintains that the applicant's spouse would have to support her husband financially in Haiti, as he would not be able to get food, clothing, shelter and medical care in Haiti without her support. Further, counsel explains that the applicant financially provides for his wife by working two jobs, and were he to relocate abroad, she would not be able to support herself and pursue a nursing degree. Moreover, counsel states that the applicant's spouse would not be able to visit her husband in Haiti due to the dangerous country conditions. *Supra* at 1-3. In her own declaration, the applicant's spouse explains that she and her husband lost a child in 2010, and her husband provides her with the daily care and emotional support she needs. She asserts that she needs her husband to provide financially for her as well. *See Letter from* dated March 25, 2013. Evidence that the applicant and his spouse lost a child in 2010 has been provided. In addition, a letter has been provided from the applicant's father-in-law detailing the bond the applicant shares with his wife. *See Letter from* dated March 25, 2013. Financial documentation in the record indicates that the applicant contributes financial support to the family. Moreover, as noted above, the U.S. Department of State has issued a travel warning urging U.S. citizens to exercise caution in Haiti due to a poor infrastructure and the high incidents of violent crime. *Supra* at 1. Based on a totality of the circumstances, the applicant has established that his spouse would experience extreme hardship were she to remain in the United States while the applicant relocates aboard due to his inadmissibility.

The record establishes that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this

> country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the U.S. citizen spouse would face if the applicant were to relocate to Haiti, regardless of whether she accompanied him or remained in the United States; the payment of taxes; gainful employment in the United States; apprenticeship completion certificate issued to the applicant by the Florida Department of Education; community ties; and his apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's attempt to enter the United States by fraud or willful misrepresentation, periods of unlawful presence and unauthorized employment while in the United States and the placement of the applicant in removal proceedings.

Although the violations committed by the applicant are serious in nature, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.