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

(b)(6)

[redacted]

DATE: FEB 04 2014 Office: NEW YORK, NY [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 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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Morgan Payne for
Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York. The matter 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 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 procuring a visa and admission to the United States by fraud or willful misrepresentation of a material fact. The applicant's spouse is a U.S. citizen. She seeks a waiver of inadmissibility in order to reside in the United States.

The District Director found that the applicant had failed to establish extreme hardship to a qualifying relative and the Form I-601, Applicant for Waiver of Grounds of Inadmissibility (Form I-601), was denied accordingly. *Decision of the District Director*, dated July 2, 2013.

On appeal, counsel asserts that the director failed to analyze the applicant's spouse's hardship in correlation with his daughter's hardship; she summarily dismissed other relevant hardship factors; and the applicant provided sufficient credible evidence to show extreme hardship to her spouse if her waiver is denied. *Form I-290B, Notice of Appeal or Motion* (Form I-290B), filed July 29, 2013.

The record includes, but is not limited to, the applicant's spouse's affidavit, a letter and brief from counsel, custody documents, articles on childhood trauma and financial records. 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, that:

> (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:

> (1) The Attorney General [now Secretary of the Department 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 of such an alien.

The record reflects that the applicant obtained a visa on October 22, 1999 using an assumed name and she was admitted to the United States several times with this visa, with the last admission being on November 24, 2004. She is therefore inadmissible to the United States pursuant to section

212(a)(6)(C)(i) of the Act for procuring a visa and admission to the United States through willful misrepresentation of a material fact. The applicant does not contest the finding of inadmissibility.

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 her stepdaughter can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse. 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,* 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*, 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 AAO will first address hardship to the applicant's spouse if he relocates to Jamaica. The applicant's spouse states that his entire family is in New York and he has never lived anywhere else; and he would have to give up his job, insurance and pension. The record includes evidence of the applicant's spouse's employment in the United States.

The applicant's spouse also states that he would feel trauma knowing that his daughter would be alone; the thought of leaving his family is overwhelming and traumatic; and he cannot risk his daughter regressing as she is finally feeling secure and happy. The applicant's spouse states that he fought for years to gain custody over his daughter who grew up with her drug-addicted mother who died from AIDS; and his daughter suffered through homelessness and scarcity of basic needs.

The record includes a November 29, 1999 court order granting the applicant's spouse custody of his daughter, now age 20. In the applicant's spouse's petition for custody, dated December 15, 1998, he asserts that his daughter was in foster care due to her mother's negligence and abandonment and that he loves his daughter and is concerned for her well-being. The record includes articles on childhood trauma.

The record reflects that the applicant's spouse was born and raised in the United States, and he is employed in the United States. His efforts to obtain custody of his daughter in 1999 are clear from the record. The record, however, does not include supporting documentary evidence of the specific difficulties she would experience without the applicant's spouse and how they would affect him. The record does not include supporting documentary evidence of the current state of the applicant's spouse and his daughter's relationship, other than the applicant's spouse's statement. The record reflects that the applicant's spouse would experience difficulty if he relocated to Jamaica. However, the AAO finds that there is insufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that a qualifying relative would suffer extreme hardship upon relocation to Jamaica.

The AAO will now address hardship to the applicant's spouse if he remains in the United States without her. Counsel asserts the applicant's spouse's daughter has a myriad of emotional difficulties; his daughter is in a stable home; he fears that a major destabilizing event such as the loss of a stepmother could cause his daughter to regress; he would be totally devastated should his daughter's healing process be destroyed; and after living through a forced separation from his daughter, a second forced separation would destroy him emotionally.

Counsel states that the applicant and her spouse have intense emotional, social, family, economic and spiritual ties; the applicant's bond with her spouse must be given great weight; and the applicant's spouse is uncertain and frightened about his future.

The applicant's spouse states that he has finally found someone he can trust and rely on; he would be traumatized by the disquiet in his life if the applicant had to depart from the United States; his daughter had an incredibly difficult childhood; she has finally experienced family normalcy with him and the applicant; her mother was involved with a drug dealer, engaged in substance abuse and ignored their daughter; he was awarded sole custody of his daughter; her mother died of AIDS in December 2012; his daughter has improved emotionally since he began his relationship with the applicant; they have formed a family unit with the applicant's children; his daughter sees the applicant as a mother figure; the applicant is kind to his daughter; and he would be worried about his daughter if the applicant left.

The record reflects that the applicant's spouse would experience emotional hardship without the applicant. The record does not include supporting documentary evidence to show how his daughter's hardship, resulting from separation from the applicant, would affect him. The AAO finds that there is insufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that a qualifying relative would suffer extreme hardship upon remaining in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Therefore, the AAO finds that no purpose would be served in discussing whether she merits a waiver as a matter of overall discretion.

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 not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.