



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **SEP 04 2014** OFFICE: WEST PALM BEACH, FL

FILE: [REDACTED]

IN RE: APPLICANT: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), and section 212(h) of the Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

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,

A handwritten signature in black ink that reads "Ron C. Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Haiti who has resided in the United States since January 20, 2001, when he was admitted pursuant to an immigrant visa. He 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 procured a visa, documentation, or admission to the United States through fraud or misrepresentation. The applicant was also found to be inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the son of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative filed by his U.S. citizen son. The applicant seeks waivers of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), and section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen parent and sons.

The Field Office Director concluded that the applicant did not merit a favorable exercise of discretion and denied the application accordingly. *See Decision of Field Office Director* dated February 25, 2014.

On appeal, counsel submits a brief in support. Therein, counsel contends the positive factors outweigh the negative factors, and that the record contains clear evidence of hardship to the applicant's son and father. In addition, counsel contends the Field Office Director erred by not discussing the applicant's younger son's medical conditions, and by not providing the applicant with an opportunity to rebut inconsistencies and discrepancies.

The record includes, but is not limited to: documentation of immigration and criminal proceedings; evidence of birth, marriage, residence, and citizenship; medical records; letters from relatives, employers, and members of the community; educational documents; a vehicle registration; copies of income tax transcripts; a lease agreement; photographs; and other applications and petitions. 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:

- (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.

In the present case, the record reflects that the applicant's father, then a lawful permanent resident, filed a Petition for Alien Relative (Form I-130) on the applicant's behalf. The petition was approved, the applicant subsequently applied for an immigrant visa as the unmarried son of a lawful permanent resident, and he included two of his own children on the application. On June 15, 2000, at a consular interview, the applicant signed a statement acknowledging: "I... fully understand that I shall lose my special immigrant immediate relative or preference status or right to benefit from the chargeability of my accompanying parent if I marry prior to my application for admission at a port of entry into the United States, and that I could then be subject to exclusion therefrom." *Applicant's statement*, June 15, 2000. The applicant later admitted in a January 29, 2014, sworn statement, that he married a woman on January 19, 2001, one day before he was admitted to the United States as the unmarried son of a lawful permanent resident. The marriage is confirmed by a marriage certificate contained in the record. The record, therefore, reflects that the applicant obtained the visa and procured admission into the United States knowing his marriage rendered him ineligible for such benefits as the unmarried son of a lawful permanent resident. The applicant's fraud or misrepresentation is not contested on appeal.

The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured a visa, documentation, or admission to the United States through fraud or misrepresentation. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. citizen father.

The applicant also does not contest his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, which states, in pertinent part:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

In this case, the record reflects that on [REDACTED] the applicant pled guilty in the [REDACTED] County Circuit Court of Florida to one count of child abuse in violation of section 827.03(1) of the 2004 Florida Statutes Annotated. Adjudication was withheld and the applicant was ordered to serve three years of probation, have no violent contact with the victim, his elder son, complete a parenting class, and pay \$470 in fines and costs.

Section 827.03(1) of the 2004 Florida Statutes Annotated provides, in pertinent part:

(1) "Child abuse" means:

- (a) Intentional infliction of physical or mental injury upon a child;
- (b) An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
- (c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

A person who knowingly or willfully abuses a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The applicant was placed in removal proceedings and on August 18, 2005, an immigration judge found the applicant's conviction was not for a crime involving moral turpitude. The immigration judge noted that the divisible statute could prohibit behavior such as spanking, which does not involve moral turpitude. *Order of immigration judge*, August 18, 2005. The immigration judge also found that the record of conviction was unhelpful in a determination of whether he had violated the portion of the divisible statute which involved moral turpitude. *Id.* The Department of Homeland Security appealed the immigration judge's decision, and the Board of Immigration Appeals (BIA) sustained the appeal. In the decision, the BIA stated that the Second District Court of Appeals for Florida specifically found that spanking does not fall under section 827.03(1), and that other circuit courts have held that this type of crime involves moral turpitude. *BIA decision*, March 16, 2007. The BIA concluded that the applicant's crime was one involving moral turpitude. *Id.*

On appeal, the applicant does not contest whether his violation of section 827.03(1) of Florida Statutes Annotated qualifies as a crime involving moral turpitude. The applicant has not indicated that the BIA decision was in error, or that the BIA decision is otherwise not binding on the United States Citizenship and Immigration Services. The record reflects that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude. The applicant requires a waiver of inadmissibility under section 212(h) of the Act.

The record contains references to hardship the applicant's sons would experience if the waiver application were denied. It is noted that although Congress included hardship to an alien's children as a factor to be considered in assessing extreme hardship for a waiver under section 212(h) of the Act, Congress did not include hardship to an alien's children as a factor to be considered for a waiver under section 212(i) of the Act. As the applicant requires waivers under both section 212(h) and 212(i) of the Act, and the only qualifying relative for waivers of inadmissibility under both sections of the Act is his U.S. citizen father, hardship to the applicant's children will not be separately considered, except as it may affect the applicant's father.

Sections 212(h) and 212(i) of the Act provide 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*, 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. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 father states in a letter that the applicant helps him with everything. He explains that he had a stroke in 2007, and that the applicant's financial support is necessary because the Social Security Administration (SSA) gives him only \$600 a month. The father claims that he cannot take care of the children, and he does not want to live on the street. The father's medical records from 2007, copies of U.S. federal income tax transcripts, and the applicant's educational certificates are present in the record. The applicant's employer stated in a letter that the applicant has been an employee since 2004.

The applicant's father contends he had a stroke in 2007, and the applicant provides medical records in support. However, the record lacks documentation from a medical services provider with details about the severity of the father's current, complete medical condition and how it affects his quality of life to allow an assessment of the father's medical needs and whether the applicant can assist with those needs. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, we are not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed, or the nature and extent of any hardship the applicant's father would suffer as a result of the applicant's inadmissibility.

Furthermore, the applicant has submitted no evidence to support assertions that his father's sole income is from the SSA, and that he receives \$600 a month. The applicant has also not provided documentation to support an assertion that he assists his father financially, nor is there any evidence on the father's expenses. The most recent tax form for the applicant is from 2009 and in a January 29, 2014 sworn statement he stated that he had been unemployed since 2011. This documentation conflicts with the applicant's claim to assist his father financially. Although these assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Similarly, the applicant has not explained or provided evidence to show how he otherwise helps his father.

The Field Office Director noted that public records indicate that the applicant and his father live at different addresses. The Field Office Director also stated that the applicant's January 29, 2014, testimony under oath, revealed that, contrary to present assertions, the applicant's father and son actually provide financial support to the applicant. On appeal, counsel claims that the applicant should have been afforded an opportunity to explain any inconsistencies or discrepancies, as there might be a legitimate reason or explanation for the inconsistency or discrepancy. Yet, on appeal, the applicant offers no explanation for his discrepant answers, nor does he provide an explanation for how he otherwise assists his father while living at a different residence. Given these unexplained inconsistencies, and the lack of evidence in support of the assertions of medical related hardship, the record does not establish that the applicant's father would experience extreme hardship in the event of separation from the applicant.

The applicant has made no assertions, and provided no evidence on any hardship his father would experience upon relocation to Haiti. Therefore, the record does not establish that his father would experience extreme hardship if the father relocated to Haiti with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The applicant has failed to establish extreme hardship to his U.S. Citizen parent as required under sections 212(h) and 212(i) of the Act. 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 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.

ORDER: The appeal is dismissed.