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



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: NEWARK, NEW JERSEY

Date: OCT 04 2010

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 \$585. 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,

Tariq Syed

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey, 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 an immigration benefit through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a United States citizen and 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.

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 May 23, 2008.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Services (USCIS) "erroneously denied the [applicant's] application" by failing to "take into consideration the substantial evidence submitted that was probative of the [applicant's] eligibility for a [w]aiver." *Form I-290B*, filed June 23, 2008. Additionally, counsel claims that USCIS "ignored persuasive evidence submitted by the [applicant's] wife."

The record includes, but is not limited to, counsel's appeal brief; affidavits from the applicant and his wife; a letter from the applicant's wife's employer; a letter of support for the applicant and his wife; tax documents; business documents, a gym membership contract, and a bank statement; documents for the applicant's marriages and divorce; and documents from the applicant's immigration court proceeding. 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 February 22, 1999, the applicant filed a Petition to Remove the Conditions on Residence (Form I-751). The AAO notes that the applicant submitted the Form I-751 with a forged signature for his ex-spouse. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 the USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals (Board) stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., *In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. See *Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be

considered in analyzing hardship. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; see also *U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. See, e.g., *Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

In an affidavit dated February 9, 2007, the applicant’s wife states “[i]t would be devastating for [her] to leave [their] business which [they] worked so hard to build up, [her] children, [her] home, family and the health insurance, security and opportunities in the United States.” She claims that all of her family, including three children and four grandchildren, reside in the United States and they are active in their church. The applicant’s wife states they were going to close on a home and if they have to move to Jamaica, they would lose their down payment. The applicant’s wife states she is a full time college student. In an affidavit dated February 23, 2006, the applicant states that he has no ties in Jamaica and he has no place to live. The applicant’s wife states she is unfamiliar “with the work force in Jamaica” and she “fear[s] that [she] would not be able to find employment in Jamaica.” The record establishes that in 2003, the applicant’s wife was employed at the New Jersey Foundation for the Blind. *Letter*

from [REDACTED] *New Jersey Foundation for the Blind*, dated September 29, 2003. Further, the AAO notes that the record establishes that the applicant and his wife run a heating and cooling business, and the applicant's wife also works at a childcare center. See payroll documents from *St. Ann's Community Day Care Center*, dated September 30, 2005 and October 14, 2005.

The applicant's wife claims that she is "concerned about growing old in Jamaica with no one their [sic] to help or support [her]" and she could not "rely on [her] children to send [her] money in Jamaica because they have their own family life and children of their own." The applicant states he "suffer[s] from high blood pressure and [he] [is] currently on medication." He claims that in Jamaica, he "would not be guaranteed quality medical treatment" and he "would not be able to buy the expensive medication that [he] need[s]." The applicant's wife states she suffers from high blood pressure and "fatigue, and bodily discomfort." She also states that she suffers from severe back pain from a 1997 work related injury. The applicant's wife states they have health insurance in the United States and they "would not have access to medical insurance that would cover treatment for [their] high blood pressure."

The AAO notes the record contains no documentary evidence that the applicant and his wife were in the process of buying a home and/or own any real property in the United States. Additionally, the AAO acknowledges that the applicant has been residing in the United States for many years; however, no evidence has been submitted establishing that he and his wife cannot find a place to live in Jamaica. The AAO notes that other than the applicant's wife and counsel's statement, there is nothing in the record establishing that the applicant's wife is a full time college student. Additionally, no country conditions materials or documentation has been submitted to establish that the applicant and his wife would be unable to obtain employment in Jamaica. The AAO also notes that there is no documentary evidence in the record that the applicant and his wife for the claimed medical issues or that treatment is unavailable or unaffordable in Jamaica. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *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)). Although the applicant's wife may experience difficult in relocating to Jamaica, the AAO does not find that the applicant's wife would suffer extreme hardship if she joined the applicant in Jamaica.

In addition, the record also fails to establish extreme hardship to the applicant's wife if she remains in the United States. In counsel's undated appeal brief, counsel states the applicant "is needed for every facet in [the applicant's wife's] life; emotionally, physically, and financially." The applicant's wife states she "would suffer extreme hardship and sadness if [she] were forced to live separately from [the applicant]." She claims that she "would suffer from loneliness and depression." The AAO notes the applicant's wife's emotional concerns. However, there is no evidence in the record that her emotional problems are beyond what is normally experienced by others in her position.

The applicant's wife states she suffers from high blood pressure and "fatigue, and bodily discomfort." She also states that she suffers from severe back pain from a 1997 work related injury and the applicant

helps her with her health conditions. Counsel states that since the applicant's wife "is a full time college student, [the applicant] must drive her everywhere" and he is "her full-time caretaker." The applicant's wife states she has three children and four grandchildren, and they all "depend on [the applicant] substantially." She states she does not drive and the applicant "picks [her] up and take[s] [her] everywhere," and he "prepares most of the meals in the house." The applicant claims his wife "has a bad back and is limited in the types of employment she can do." He claims his wife "works part time and the income that her employment brings in is not enough to sustain [their] family." The AAO notes that the record establishes that the applicant and his wife run a heating and cooling business, and the applicant's wife also works at a childcare center. *See payroll documents from St. Ann's Community Day Care Center*, dated September 30, 2005 and October 14, 2005.

The applicant states that if he is removed to Jamaica, he and his wife "will suffer extreme financial hardship." He states that they "both own a heating and cooling business. [He] manage[s] and [does] the labor for the business. The business is [their] primary source of income." The applicant's wife states she is responsible for "all of the clerical work in [their] company." She claims that without the applicant, she "would be unable to continue the business." She states the applicant has "special skills and talent and it would be difficult for [her] to find someone who could take his place."

The applicant claims that if he is separated from his wife, he "will endure emotionally [sic] hardship. [He] will lose her companionship and the stability of [their] relationship." The AAO notes that the applicant may suffer some hardship in being separated from his wife. The record, however, does not include documentary evidence to establish how any hardship that the applicant might encounter upon relocating to Jamaica would affect his spouse, the qualifying relative in this matter.

The AAO notes that no medical documentation has been submitted establishing that the applicant's wife is suffering from any medical conditions and/or that she is limited in the types of work she can do. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici, supra*. The AAO also notes that the applicant's wife's children and grandchildren may depend on the applicant. However, the AAO notes that hardship to the applicant's children and grandchildren is not directly relevant to a determination of extreme hardship in section 212(i) proceedings. The AAO notes that the record contains a gym membership contract as evidence of the applicant's and his wife's expenses. However, this material offers insufficient proof that the applicant's wife would be unable to support herself in the applicant's absence. The AAO does not find the record to demonstrate that the applicant's wife would experience extreme hardship if she remained in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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.