

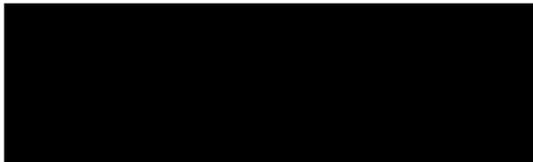
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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FILE:



Office: NEWARK, NEW JERSEY  
(MOUNT LAUREL, NEW JERSEY)

Date: SEP 22 2010

IN RE:

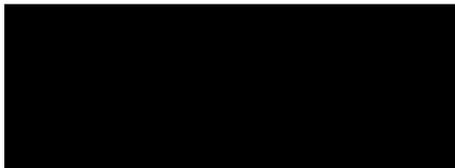
Applicant:



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:



INSTRUCTIONS:

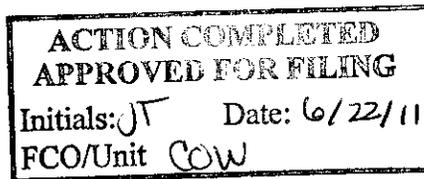
Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

*Tariq Syed*  
for

Perry Rhew

Chief, Administrative Appeals Office



**DISCUSSION:** The waiver application was denied by the District Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The District Director shall reopen the Application to Register Permanent Residence or Adjust Status (Form I-485) for action consistent with this decision.

The record reflects that the applicant is a native and citizen of Haiti 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 enter the United States through fraud or willful misrepresentation. The record indicates that the applicant is the son of lawful permanent residents 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 lawful permanent resident parents.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on his qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated June 12, 2009.

On appeal, the applicant, through counsel, contends that the United States Citizenship and Immigration Service's "decision does not follow Board [p]recedents as well as controlling judicial authority in the Circuit where the case arises. USCIS has failed to weight [sic] ALL [f]actors, both individually and collectively, in assessing extreme hardship." *Form I-290B*, filed July 14, 2009. Additionally, counsel claims that the applicant's lawful permanent resident "parents have established by clear and convincing evidence that they would suffer extreme hardship if [the applicant] is not allowed to join them in the U.S." *Id.*

The record includes, but is not limited to, counsel's appeal brief; statements from the applicant and his father; letters of support for the applicant; tax documents; a mental health assessment of the applicant's father; documents from the immigration court and the Board of Immigration Appeals (Board); a letter from Dr. Kesler Dalmacy and medical documentation relating to the applicant's father's medical conditions; articles on health in Haiti, hemiplegia, high blood pressure, and strokes; travel warnings for Haiti, and U.S. Department of State country conditions reports on Haiti. 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 August 22, 1994, the applicant's lawful permanent resident father filed a Form I-130 on behalf of the applicant. On August 23, 1995, the applicant's Form I-130 was approved. On September 28, 2000, the applicant traveled to the United States under the Transit Without Visa (TWOV) program, in order to apply for political asylum. While in the American Airlines lounge, in Miami, Florida, the applicant presented another individual's Resident Alien Card (Form I-551) to the inspecting officer. On October 17, 2000, the applicant was paroled into the United States to pursue his asylum claim. On May 4, 2001, the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589). On July 11, 2001, an immigration judge denied the applicant's Form I-589 and ordered the applicant removed from the United States. On July 30, 2001, the applicant filed an appeal with the Board. On February 26, 2002, the Board dismissed the applicant's appeal. On February 14, 2003, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On December 19, 2008, the applicant filed a Form I-601. On February 4, 2009, the District Director denied the applicant's Form I-485. On March 3, 2009, the applicant filed a motion to reopen the denial of his Form I-485. On June 12, 2009, the District Director denied the applicant's Form I-601, finding the applicant had failed to demonstrate extreme hardship to a qualifying relative.

Based on the applicant traveling to the United States posing as a TWOV alien under the TWOV program and his use of another person's resident alien card in an attempt to enter the United States, the AAO finds that the applicant willfully misrepresented a material fact in order to obtain a benefit under the Act and 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 father and mother are the only qualifying relatives 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 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 counsel's appeal brief dated July 10, 2009, counsel claims that the applicant's parents would suffer extreme and unusual hardship by joining the applicant in Haiti. In a statement dated December 12, 2009, [REDACTED] states the applicant's father is under treatment for complications of stroke, uncontrolled hypertension, asthma attacks, and weakness on the right side of his body. [REDACTED] states "[d]espite being on medications, [the applicant's father's] medical condition has not improved." The AAO also notes that the record establishes that the applicant's father had hernia surgery in 2001 and cataracts surgery in 2007 and 2008. In an undated statement, the applicant's father states he could not return to Haiti because it would be difficult to find employment, he could not afford his medications there, and "healthcare is only available for the privileged and select few." Additionally, he claims that his life would be in danger in Haiti because he would be a target for kidnapers.

In a mental health assessment dated December 15, 2008, [REDACTED] states the applicant's father "would be exposed to extreme financial, medical, psychological, and emotional hardships if [the applicant] is deported." The applicant's father states he suffers from various medical conditions and he relies on the applicant to assist him. In a statement dated May 6, 2009, the applicant states he helps his father around the house and they rely on each other. Counsel states the applicant assists his parents financially, and if he is removed to Haiti, "they would be unable to manage their finances." The applicant's father states his wife just arrived in the United States but they "are both very old." Counsel states the applicant's mother "does not speak English" and "she completely relies on [the applicant] for everything, including the simplest tasks."

The Department of Homeland Security (DHS) Secretary, Janet Napolitano, has determined that an 18-month designation of Temporary Protected Status (TPS) for Haiti is warranted because of the devastating earthquake and aftershocks which occurred on January 12, 2010. As a result, Haitians in the United States are unable to return safely to their country. Even prior to the current catastrophe, Haiti was subject to years of political and social turmoil and natural disasters. In a travel warning issued on January 28, 2009 the U.S. Department of State noted the extensive damage to the country after four hurricanes struck in August and September 2008 and the chronic danger of violent crime, in particular kidnapping. *U.S. Department of State, Travel Warning – Haiti*, January 28, 2009. Based on the designation of TPS for Haitians and the disastrous conditions which have compounded an already unstable environment, and which will affect the country and people of Haiti for years to come, and the applicant's father's health issues, the AAO finds that the relocation of the applicant's parents to Haiti would result in extreme hardship.

For the same reasons, the AAO finds that the applicant's parents would also experience extreme hardship were they to remain in the United States without the applicant. This finding is based on the extreme emotional harm the applicant's parents will experience due to concern about the applicant's well-being and safety in Haiti, a concern that is beyond the common results of removal or inadmissibility. Accordingly, the AAO finds that the applicant has established that his lawful permanent resident parents would suffer extreme hardship if his waiver of inadmissibility application were denied.

The favorable factors presented by the applicant are his lawful permanent resident parents, the extreme hardship to his parents if he were to be found inadmissible to the United States, and the absence of a criminal record.

The unfavorable factors include the applicant's attempts to enter the United States by misrepresentation, his failure to comply with an order of removal, and his unauthorized presence in the United States.

While the AAO does not condone his actions, the applicant has established that the favorable factors in his application outweigh the unfavorable factors. In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained and the waiver application is approved. The District Director shall reopen the denial of the Form I-485 on motion for action consistent with this decision.