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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**

H5

[REDACTED]

FILE:

[REDACTED]

Office: PHILADELPHIA, PA

Date:

**APR 07 2011**

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.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of Jamaica who procured and used a visa under a false name in order to enter the United States. The applicant 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). She is the wife of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Acting District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on November 21, 2008.

On appeal, counsel for the applicant asserts that the applicant has submitted sufficient information to establish that her spouse would suffer extreme hardship if the applicant is removed from the United States. *Form I-290B*, received December 19, 2008.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (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 chapter is inadmissible.

The record indicates that the applicant applied for and received a visa to enter the United States using a false name. Thus, the applicant entered the United States by materially misrepresenting her identity and is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding on appeal.

The record contains, but is not limited to, the following evidence: a brief from counsel; a statement from the applicant; a statement from the applicant's spouse; statements from the applicant's children; periodicals on the country conditions in Jamaica; medical documents and records for the applicant's spouse; a psychological examination of the applicant's spouse by [REDACTED]; an employment letter for the applicant's spouse; an employment letter for the applicant; bank statements, tax returns and credit card statements for the applicant's husband; school records for the applicant's children; and photographs of the applicant and her spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(i) of the Act provides, in pertinent part:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

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 children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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 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 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.

The AAO will first examine hardship upon relocation. Counsel for the applicant asserts the applicant’s spouse suffers from musculoskeletal disease, radiopathy and diabetes which limits his physical activity and hinders his ability to function in his daily life. *Brief in Support of Appeal*, received February 6, 2009. She asserts that he would not be able to find adequate medical care in Jamaica, that he would be unable to find employment in his field of specialization and that he would suffer hardship due to the violent socio-economic conditions in Jamaica. She further asserts that he is suffering from emotional hardship which results in frequent migraine headaches, memory lapses and bouts of shakiness resulting from his anxiety. Counsel also states that the applicant’s daughter is in a special program for a learning disability.

The applicant’s spouse has submitted a letter explaining that he suffers from back pain due to injuries sustained in an automobile accident several years ago and that he depends on his wife to assist him physically with daily household chores and parental duties. *Statement of the Applicant’s*

*Spouse*, October 30, 2008. He explains that he has had to seek help from a psychologist and that as a result of his stress and anxiety has been eating more and drinking more alcohol. He states that he has health insurance coverage in the United States, which he would not have in Jamaica, and that his current doctors are the ones who have been treating him and are familiar with his medical history. The applicant's spouse also asserts he would suffer financial hardship, lists his monthly expenses, and notes that many members of his family reside in the United States.

The record contains medical documentation indicating the applicant's spouse has experienced some medical issues, but they do not fully corroborate counsel's characterizations of the condition. There is a statement from [REDACTED] stating that the applicant's spouse's blood pressure was elevated during a general medical examination on October 13, 2008. There is an examination report from [REDACTED] dated October 13, 2008, detailing the applicant's spouse's back condition and the impact it has on his daily activities, including standing, sitting, bending, lifting, walking, sleeping and "working." There is also a medical record from Essex Pain Management Group, undated, containing raw medical data on the applicant's spouse's back problems, as well as medical records generated after the applicant's 2002 automobile accident injuries. There is a ophthalmology consultation indicating that the applicant's spouse may have some type of lesion on his eye and recommending that he return in five months for further evaluation.

This evidence is sufficient to establish that the applicant's spouse has a back condition related to injuries to his back, and that he suffers from significant pain which inhibits his daily activities to some degree. The record contains documentation that she is employed in a supervisory position, however, there is no documentation in the record which corroborates that the applicant's spouse suffers from musculoskeletal diseases, [radiculopathy] or diabetes as asserted by counsel. Nonetheless, the evidence is sufficient to establish a physical hardship to the applicant's spouse, and as such the AAO will give this factor due consideration.

While there is no documentation corroborating the assertion that the applicant's spouse would be unable to find medical treatment for his back condition in Jamaica, the AAO accepts that continuity of care with doctors who are familiar with his history and physical condition is an important consideration, and as such will consider this factor in an aggregate analysis of the hardship impacts on him.

With regard to counsel's assertions that the applicant would be unable to find employment and would suffer hardship due to the country conditions in Jamaica, the record contains some evidence of the country conditions in Jamaica, including general news periodicals. These periodicals are not sufficiently probative to establish that the applicant's spouse specifically would be subject to any violence or that he would be unable to find employment sufficient to support himself and his family.

With regard to the applicant's emotional hardship, the AAO notes that the evaluation submitted by [REDACTED] does not examine what impacts, if any, the applicant's spouse would experience if he were to relocate to Jamaica with his spouse. The record does contain evidence that the applicant's daughter has special educational needs, to wit, speech therapy. Although children are not qualifying

relatives in this proceeding, impacts on them may be relevant to the extent they indirectly impact the qualifying relative. In this case, relocating his daughter to Jamaica, where she would be unfamiliar with the social and educational environment, in addition to her special education needs, could lead to significant emotional impact on the applicant's spouse.

When the hardship factors noted above are considered in aggregate, they are sufficient to establish that the applicant's spouse would experience uncommon hardship upon relocation to Jamaica. As such, the record establishes that a qualifying relative would experience extreme hardship upon relocation.

With regard to hardship upon separation, counsel makes many of the same assertions, explaining that the applicant's spouse needs the applicant for physical support, including parenting duties and household chores. The applicant's spouse asserts he will experience financial hardship if his wife is removed, listing his monthly expenses.

As discussed above, the evidence in the record is sufficient to establish that the applicant's spouse suffers from back pain which results in a physical impact on his ability to function.

The record also contains a psychological examination from [REDACTED] diagnosing the applicant's spouse with Adjustment Disorder. *Statement of [REDACTED]* dated October 30, 2008. [REDACTED] asserts that removing the applicant would devastate the household and cause significant emotional hardship to the applicant's spouse and children. The AAO will give due consideration to this hardship factor when considering the aggregate impacts on the applicant's spouse.

With regard to financial hardship, the record contains copies of financial documents, including tax returns, credit card statements, bank statements and other documents. Although the applicant's spouse has listed some of their monthly financial obligations, the AAO takes note of a letter from the applicant's spouse's employer which indicates that he earns \$56,500 annually. *Statement of [REDACTED]* dated June 6, 2008. The applicant has not established that his salary is insufficient to cover his financial obligations, and as such, the record does not indicate that the financial impact of the applicant's removal would result in a significant hardship factor her spouse.

The record also contains school records of the applicant's children and statements from each of them explaining how they will miss the applicant if she is removed. There is sufficient evidence to establish that the applicant's daughter has a learning disability and must attend speech therapy. When considered with the other hardships experienced by the applicant's spouse – physical hardship related to his back condition and the emotional hardship he would experience if the applicant were removed – it is reasonable to presume that having to assume the additional parenting duties in light of his daughter's learning disability would result in an additional hardship to him.

When these hardship factors are considered in aggregate, they establish that the applicant's spouse would experience uncommon physical and emotional hardships. Based on these findings the AAO

concludes that the applicant has established her spouse would experience extreme hardship upon separation.

As the record establishes that a qualifying relative would experience extreme hardship upon relocation and separation, the AAO may now consider whether the applicant warrants a waiver as a matter of discretion. 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 section 212(h)(1)(B) 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-Morales*, 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 AAO finds that the unfavorable factor in this case includes the applicant's application for a visa using a false identity. The favorable factors in this case include the presence of the applicant's spouse, the presence of her U.S. citizen children, the extreme hardship her spouse would experience if she were removed and the lack of any criminal record during her residence here. The favorable factors in this case outweigh the negative factors; therefore favorable discretion will be exercised. The Acting District Director's decision will be withdrawn and the appeal will be sustained.

**ORDER:** The appeal is sustained.