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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
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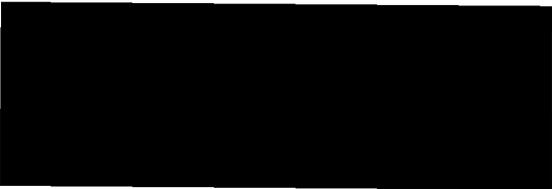
Office: PHILADELPHIA

FILE: 

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.

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 \$630. 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,



Perry Rhew
Chief, Administrative Appeals Office

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

The record establishes that the applicant, a native and citizen of Jamaica, procured entry to the United States in October 1998 by presenting a fraudulent passport and nonimmigrant visa. *Letter from [REDACTED]* dated January 23, 2008. The applicant was thus 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 entry into the United States by fraud or willful misrepresentation. The applicant does not contest the field office director's finding of inadmissibility. Rather, she 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 her U.S. citizen mother.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated January 7, 2009.

Counsel for the applicant submits a brief and supplemental documentation in support of the instant appeal. The entire record was reviewed and considered in rendering this decision.

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 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 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 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. The applicant's U.S. citizen mother is the only qualifying relative in this case. Hardship to the applicant or her U.S. citizen child, born in February 2000, can be considered only insofar as it results in hardship to a qualifying relative. 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).

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

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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 applicant's U.S. citizen mother contends that she will suffer emotional and financial hardship were she to remain in the United States while the applicant relocated abroad due to her inadmissibility. In a declaration, the applicant's mother explains that the applicant and her grandchild reside with her in the United States but were they to relocate abroad, the applicant would be unable to obtain gainful employment to support herself and her child and they would have no place to live, thereby causing emotional hardship to the applicant's mother. In addition, the applicant's mother explains that she would not be able to afford two households, one in the United States and one in Jamaica. Finally, the applicant's mother explains that her granddaughter suffers from obesity and the condition may worsen were she to relocate abroad. *Affidavit of* ██████████ dated September 22, 2010.

To begin, the record contains no supporting evidence concerning the hardships the applicant's mother states she will experience due to long-term separation from her daughter. Nor has it been established that the applicant's mother would be unable to travel to Jamaica, her native country, on a regular basis to visit her daughter. As for the concerns raised by the applicant's mother regarding her grandchild's health, the AAO notes that the applicant's mother was granted primary physical and legal custody of her grandchild in 2003. *Order*, dated August 7, 2003. It has not been established that the applicant's grandchild is unable to remain in the United States with her grandmother, thereby ameliorating many of the concerns raised by the applicant's mother regarding her grandchild's welfare and well-being. Although the applicant's mother asserts that she is unable to care for her grandchild while maintaining employment, 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)). Finally, no documentation has been provided establishing that the applicant would be unable to obtain gainful employment in Jamaica, thereby ameliorating the financial hardship referenced by the applicant's mother in regards to having to support two households.

The AAO recognizes that the applicant's mother will endure hardship as a result of long-term separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The record fails to establish that the applicant's mother's continued care and support require the applicant's physical presence in the United States. The AAO concludes that

based on the evidence provided, it has not been established that the U.S. citizen mother will experience extreme hardship were she to remain in the United States while the applicant relocate abroad due to her inadmissibility.

With respect to relocating abroad to reside with the applicant based on the denial of the applicant's waiver request, in the Memorandum of Law in Support of I-601 waiver, the applicant's mother's long-term ties to the United States and the problematic country conditions in Jamaica, including crime and violence and substandard living conditions, were referenced. *See Memorandum of Law in Support of I-601 Waiver*. The applicant's mother further details that she does not have a home in Jamaica, and her mother, brothers and sister all reside in the United States. [REDACTED] at 2.

The record establishes that the applicant's mother became a lawful permanent resident of the United States in 2000, more than 10 years ago. Were she to relocate abroad to reside with the applicant, she would be forced to move to a country with which she is no longer familiar. She would have to leave her community and her gainful employment, since 2002, with [REDACTED] New Jersey, earning over \$27,000, and she would be concerned about her and her family's safety and well-being in Jamaica.¹ Moreover, the applicant's mother would not be able to maintain her quality of living due to the substandard economy in Jamaica.² It has thus been established that the applicant's mother

¹ As noted by the U.S. Department of State,

Crime, including violent crime, is a serious problem in Jamaica, particularly in Kingston and Montego Bay. While the vast majority of crimes occur in impoverished areas, random acts of violence, such as gunfire, may occur anywhere. The primary criminal concern for tourists is becoming a victim of theft. In several cases, armed robberies of U.S. citizens have turned violent when the victims resisted handing over valuables. Crime is exacerbated by the fact that police are understaffed and ineffective. Additionally, there have been frequent allegations of police corruption. *Country Specific Information-Jamaica, U.S. Department of State*, dated February 24, 2011.

² As noted by the U.S. Department of State,

Jamaica's economy is improving in the wake of the global recession, but still faces serious long-term problems: a sizable merchandise trade deficit, large-scale unemployment and underemployment, and a debt-to-GDP ratio of almost 130%. Structural weaknesses, low levels of government infrastructure investment, and high-cost energy erode confidence in the productive sector. High unemployment exacerbates the serious crime problem, including gang violence that is fueled by the drug trade. . . . The government faces the difficult prospect of having to achieve fiscal discipline in order to maintain debt payments while simultaneously attacking serious crime challenges that are hampering economic growth. *Background Note-Jamaica, U.S. Department of State*, dated April 6, 2011.

would suffer extreme hardship were she to relocate abroad to reside with the applicant due to her inadmissibility.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The record, reviewed in its entirety, does not support a finding that the applicant's mother will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a son or daughter is removed from the United States or is refused admission. There is no documentation establishing that the applicant's mother's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's mother's situation, the record does not establish that the hardships she would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.