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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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**U.S. Citizenship  
and Immigration  
Services**



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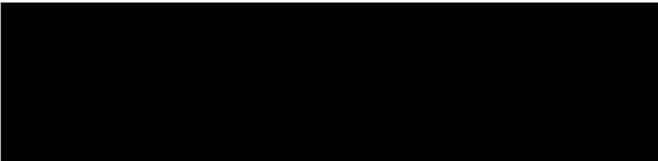


Date: Office: KINGSTON, JAMAICA FILE:

IN RE: DEC 13 2011 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, Kingston, Jamaica, 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 admission to the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is engaged to a United States citizen and is the father of a lawful permanent resident child. He is the beneficiary of an approved Petition for Alien Fiancé(e) (Form I-129F). 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 fiancée and child.

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 August 3, 2009.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Service (USCIS) applied the "extremely unusual hardship' or exceptional hardship [emphasis removed]" standard to this case. *Form I-290B*, dated September 2, 2009. The AAO notes that the decision by USCIS clearly states that the "extreme hardship" standard will be applied. Counsel claims that the applicant's spouse "will suffer extreme hardship; she has children who are United States residents and...the applicant is the father of these children. Although these children are over the age of 21, the family as a whole, including the mother and [fiancée] will suffer extreme hardship if she were required to leave the United States to be with and marry her [fiance] [emphasis removed]." *Id.* The AAO notes that the record establishes that the applicant and his wife have one child who is a lawful permanent resident of the United States. Counsel also claims that the applicant's wife "has established a life in the United States along with her children." *Id.*

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant's fiancée and his daughter, and utility and household bills. 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 September 12, 1990, the applicant attempted to enter the United States by presenting a photo-substituted Jamaican passport. The applicant was permitted to withdraw his application for admission.

In counsel’s appeal brief dated September 28, 2009, counsel claims that the applicant “was a victim of a group of individuals who were apparently in the ‘business’ of providing fraudulent passports with visas for individuals and the instant applicant was unaware that the document was not genuine since it had all appearances of coming from the proper issuing authorities.” Counsel states that “it is highly [probable] that the applicant herein was an innocent victim of fraud perpetrated by other individuals.”

The AAO finds counsel’s contention that the applicant is not inadmissible to the United States through the misrepresentation of a material fact to be unpersuasive. The AAO observes that in waiver proceedings the burden of proof is on the applicant to establish admissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. As noted above, the record establishes that on September 12, 1990, the applicant presented a photo-substituted passport in an attempt to enter the United States. During the applicant’s sworn statement taken on September 12, 1990, the applicant stated that he gave his friend [REDACTED] a photo of himself so that she could “insert it in passport.” *Sworn statement*, dated September 12, 1990. This is inconsistent with counsel’s claim on appeal. Additionally, the AAO notes that even though counsel claimed that the applicant would provide a sworn statement regarding the fraudulent passport, no sworn statement or any evidence was provided to support counsel’s contention that the applicant was a victim of fraud. Given the fact that the applicant testified that he provided a photo of himself for his friend to place in a passport and that no evidence has been provided to support counsel’s claim that the applicant was a victim of fraud, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) for willfully misrepresenting a material fact in order to procure admission into the United States.

The AAO notes that if an alien seeking a K-1 nonimmigrant visa is inadmissible, the alien’s ability to seek a waiver of inadmissibility is governed by 8 C.F.R. § 212.7(a), which provides, in pertinent part:

- (a) *General*—(1) *Filing procedure*—(i) *Immigrant visa or K nonimmigrant visa applicant*. An applicant for an immigrant visa or “K” nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on

Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

The AAO considers the applicant's fiancée to be a qualifying relative in this situation. In determining that a fiancée is equivalent to a spouse for purposes of the extreme hardship statute, the AAO relies on 22 C.F.R. § 41.81 which provides:

§ 41.81 Fiancé(e) or spouse of a U.S. citizen and derivative children.

(a) Fiance (e). An alien is classifiable as a nonimmigrant fiancé(e) under INA 101(a)(15)(K)(i) when all of the following requirements are met:

(3) The alien otherwise has met all applicable requirements in order to receive a nonimmigrant visa, *including the requirements of paragraph (d)* of this section.

(d) *Eligibility as an immigrant required.* The consular officer, insofar as is practicable, must determine the eligibility of an alien to receive a nonimmigrant visa under paragraphs (a), (b) or (c) of this section *as if the alien were an applicant for an immigrant visa*, except that the alien must be exempt from the vaccination requirement of INA 212(a)(1) and the labor certification requirement of INA 212(a)(5).

A waiver of inadmissibility under section 212(i) of the Act is dependent first 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/fiancée or parent of the applicant. Hardship to the applicant or his daughter can be considered only insofar as it results in hardship to a qualifying relative. The applicant's fiancée 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).

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 of Immigration Appeals (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*, 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 AAO notes that other than counsel's statement that the applicant's fiancée is settled in the United States and has "severed all close ties to Jamaica," the applicant has not asserted that his fiancée will endure hardship should she relocate to Jamaica. In the absence of clear assertions from the applicant,

the AAO may not speculate regarding challenges his fiancée will face outside the United States. The applicant bears the burden to show extreme hardship to his qualifying relative in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. In that the record does not include sufficient documentation of financial, medical, emotional or other types of hardship that the applicant's fiancée would experience if she joined the applicant in Jamaica, the AAO does not find the applicant to have established that his fiancée would suffer extreme hardship upon relocation.

In addition, the record also fails to establish extreme hardship to the applicant's fiancée if she remains in the United States. Counsel states the applicant's daughter "is now attending University and needs the financial and moral support of [the applicant]." In a statement dated December 22, 2007, the applicant's fiancée claims that she is having difficulty paying her daughter's college tuition. She states it is "difficult to maintain [her daughter's] tuition plus other bills as a single mother," and if the applicant were in the United States, he could help with her "financial burden." The AAO notes that in 2009, the applicant's daughter stated she only had to complete three (3) more semesters to receive her master's degree in education. *See statement by* [REDACTED] dated September 24, 2009. Additionally, no documentary evidence has been submitted establishing that the applicant's daughter relies on her mother and/or the applicant in paying for her college education. In a statement dated September 24, 2009, the applicant's fiancée stated "[they] do not have enough money to visit [the applicant] often." Counsel states that while the applicant "may not become the sole support of the family, his income is needed to help continue the support." The AAO notes the applicant's fiancée's financial concerns.

The applicant's fiancée states she is "very depressed and find[s] it difficult to complete [her] activities of daily living." She states that she has "no reason to live and life is a huge burden on [her] without [her] loved one." She also states that she needs the applicant "not only for economic assistance, but mostly with encouragement, companionship and someone to talk about the problems we are all having." The applicant's fiancée states their "daughter is suffering very much [from] the absence of [the applicant]" and she is "even sadder when [she] see[s] [her daughter] so sad and suffering so much." In a statement dated September 24, 2009, the applicant's daughter states she does not want to "imagine [her] life without [the applicant] any longer." The AAO acknowledges that the applicant's daughter may be suffering some hardship in being separated from the applicant; however, the AAO notes that the applicant's daughter is not a qualifying relative, and the applicant has not shown that hardship to his daughter has elevated his fiancée's challenges to an extreme level. However, the AAO notes the concerns for the applicant's daughter. Additionally, the AAO notes the emotional concerns of the applicant's fiancée.

The AAO acknowledges that the applicant's fiancée may be suffering some emotional problems in being separated from the applicant. However, the AAO notes that while it is understood that the separation of loved ones often results in significant psychological challenges, the applicant has not distinguished his fiancée's emotional hardship upon separation from that which is typically faced by the loved ones of those deemed inadmissible. The AAO finds the record to include some documentation of the applicant's fiancée's expenses; however, this material offers insufficient proof that she is unable to support herself in the applicant's absence. Additionally, the applicant has not distinguished his

fiancée's financial challenges from those commonly experienced when a family member remains in the United States alone. Based on the record before it, the AAO finds that the applicant has failed to establish that his fiancée would suffer extreme hardship if his waiver application is denied and she remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's fiancée 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.