

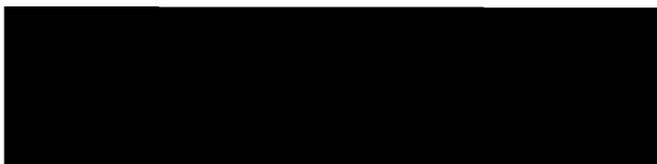
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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Washington, DC 20529-2090



U.S. Citizenship  
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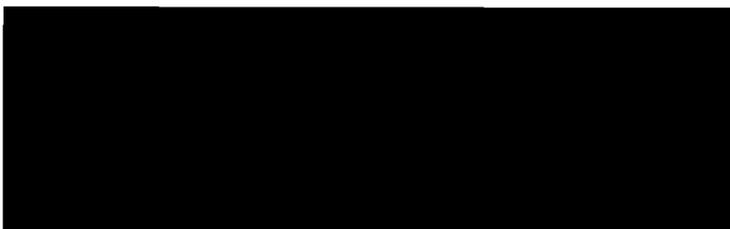
Office: PHILADELPHIA, PA

FILE: 

IN RE: 

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica who entered the United States on or about January 11, 2001 using a passport that did not belong to her. She has been 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 procuring admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130), and her husband, a United States citizen, is her petitioner. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The Field Office Director concluded that the applicant failed to establish that a bar to her admission to the United States would result in "extreme hardship" to the qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated February 13, 2009.

On appeal, the applicant's attorney provided a letter in support of the applicant's appeal. In the letter, the applicant's attorney asserted that the qualifying relative will experience health, financial and emotional hardships as a consequence of the applicant's continued inadmissibility. Further, the applicant's attorney contends that the qualifying spouse relies upon the applicant to provide emotional and financial support to the qualifying spouse's mother. The applicant's attorney also indicates that the qualifying spouse's immediate family members live in the United States.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), appeal letters, a letter from the qualifying spouse's doctor, affidavits from the qualifying spouse and the applicant, country condition materials, an affidavit from the qualifying relative's mother, copies of the qualifying spouse's prescriptions, financial documentation, reference letters, medical documents regarding the applicant and materials submitted in conjunction with the Application to Adjust Status (Form I-485). The entire record was reviewed and considered in rendering a decision on the appeal.

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, 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. The applicant's husband 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 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.

In the present case, the record reflects that the applicant entered the United States on or about January 11, 2001 using a passport belonging to another person. The applicant conceded such facts in a sworn statement dated January 23, 2008. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for procuring entry to the United States through fraud or misrepresentation.

The applicant’s qualifying relative is her husband, and as aforementioned, his Form I-130 has already been approved. The documentation provided that specifically relates to the applicant’s hardship includes Form I-601, Form I-290B, appeal letters, a letter from the qualifying spouse’s doctor, affidavits from the qualifying spouse and the applicant, country condition materials, an affidavit from the qualifying relative’s mother, copies of the qualifying spouse’s prescriptions, financial documentation, reference letters and materials submitted with Form I-485. The entire record was reviewed and considered in rendering a decision on the appeal.

As aforementioned, the applicant’s attorney asserted that the qualifying relative will experience health, financial and emotional hardships as a consequence of the applicant’s continued inadmissibility. Further, the applicant’s attorney contends that the qualifying spouse relies upon the applicant to provide emotional and financial support to the qualifying spouse’s mother. The applicant’s attorney also indicates that the qualifying spouse’s immediate family relatives live in the United States.

In his most recent affidavit, the qualifying spouse states that it would be “devastating” for him to live without the applicant. He explains that she takes care of him both financially and with daily chores. However, the record contains no supporting evidence detailing the types of emotional hardships that the qualifying spouse could endure upon separation from his wife or indicating that

he would experience emotional hardship beyond the common results of removal or inadmissibility. Assertions made by the applicant's spouse regarding his emotional hardships are evidence and have been considered. However, assertions cannot be given great weight absent supporting evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Further, the qualifying spouse indicates that he lost his job in 2009 and the applicant is the "primary earner." The record contains tax returns and other income documents for the qualifying spouse's sister and the qualifying spouse, with the most recent document dating from 2006. In addition, the applicant also submitted a letter from her employer indicating that she has been employed since 2003 and provided copies of cancelled checks that were given to her for her services in 2007. The record also contains various bank statements for an account held by the qualifying spouse and his sister, as well as a lease from 2004. No current income tax returns or other documentation was submitted demonstrating that the qualifying spouse is no longer employed and that the applicant is the sole income provider, and no documentation of current expenses was provided. Further, the applicant's attorney and qualifying spouse assert that the applicant assists in the financial support of the qualifying spouse's mother, yet there is no documentary proof to confirm these assertions. As noted above, assertions cannot be given great weight absent supporting evidence. *See Matter of Soffici, supra*, at 165. As such, the applicant failed to provide sufficient evidence to find that the qualifying spouse would face financial difficulties as a result of the applicant's removal.

Moreover, the applicant's attorney and the qualifying spouse assert that the qualifying spouse would suffer medical hardships due to his separation from the applicant. The record includes a letter from the qualifying spouse's doctor, statements made by the qualifying spouse and his mother and copies of the qualifying spouse's prescriptions. First, the applicant's attorney and qualifying spouse assert that the qualifying spouse receives his health insurance through the applicant's employment and he would otherwise not be able to afford his medical expenses. However, there was no documentation provided regarding the employment and benefits of the applicant to support this claim. Further, the applicant's attorney, the qualifying spouse and his mother also assert that the applicant assists the qualifying spouse with daily chores, such as meal preparation, blood-glucose monitoring and assistance with doctor's appointments. The letter from the qualifying spouse's doctor confirms that the qualifying spouse has "uncontrolled Diabetes Mellitus and Osteoarthritis." The doctor further indicates that "as a result of [the qualifying spouse's] poorly controlled diabetes [he] is considering starting him on insulin therapy which would require daily injections." He further notes that the qualifying spouse's "vision is blurry and will need assistance from his wife to draw the proper amount of insulin and monitor him." The doctor also states that it is "medically necessary" for the applicant to manage the qualifying spouse's meal preparation, blood glucose monitoring and doctor's appointments. However, it is unclear why the qualifying spouse cannot perform many of these functions, and there was no indication as to whether another person could perform the insulin injections for the qualifying spouse. Moreover, the letter from the qualifying spouse's doctor failed to indicate the severity of the qualifying spouse's medical issues and whether his health issue rendered him unable to work.

The applicant therefore failed to demonstrate how the qualifying spouse's separation from her would result in extreme hardship.

The applicant's attorney indicates that the qualifying spouse would no longer have medical insurance through the applicant's employment if they both relocated to Jamaica. In his affidavit the qualifying spouse asserted that "the health care that one might be able to receive in Jamaica would be greatly inferior to the health care that I currently receive in the United States." The country condition information from the State Department that was provided indicates that "medical care is more limited than in the United States." However, it also states that comprehensive emergency medical services are available in the cities of Kingston and Montego Bay and there are smaller public hospitals located in each parish. The applicant did not address where she and the qualifying spouse would live if they were to return to Jamaica, and therefore it is unclear whether the qualifying spouse would face a hardship based on access to health care in Jamaica.

Further, the applicant's attorney and the qualifying spouse indicate that the qualifying spouse's entire immediate family live in the United States and that the qualifying spouse has lived in the United States since 1991. Further, the qualifying spouse indicates that he and the applicant and his other siblings care for his mother in New York. The AAO notes that the applicant's mother resides in New York and the applicant and her spouse reside in Philadelphia, and although she states that they visit her regularly in New York and provide care, it appears they are not primarily responsible for her daily care as they do not reside in the same state or metropolitan area. The record does not contain any other documentation concerning the applicant's spouse's family members, such as where they reside and how frequently the applicant and her spouse are in contact with them, and the evidence on the record does not establish that separation from his family members in the United States and readjusting to conditions in Jamaica would result in extreme hardship to the applicant's spouse.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining 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.