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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



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Date: **JUL 27 2011** Office: NEWARK, NEW JERSEY

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the 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, Newark, New Jersey. The matter 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 Haiti who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated August 29, 2009.

On appeal, counsel contends the applicant established the requisite hardship, particularly considering the applicant helps pay for household expenses and cares for his wife's two children from a previous relationship.

Section 212(a)(6)(C)(i) of the Act provides:

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.

Section 212(i) provides:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien . . . .

In this case, the record shows, and the applicant does not contest, that he attempted to enter the United States on January 20, 1995, using a fraudulent resident alien card under the name "██████████" *Record of Sworn Statement by ██████████* dated January 20, 1995. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

The Department of Homeland Security (DHS) Secretary, [REDACTED] issued an 18-month designation of Temporary Protected Status (TPS) for Haiti because of the devastating earthquake which occurred on January 12, 2010. Secretary [REDACTED] has extended TPS for Haitians until January 22, 2013. In addition to the disastrous conditions caused by the earthquake, the U.S. Department of State has issued a Travel Warning strongly urging U.S. citizens to avoid all but essential travel to Haiti given "the critical crime level, cholera outbreak, frequent and violent disturbances in Port-au-Prince and in provincial cities, lack of adequate medical facilities, and limited police protection." The Travel Warning specifies that no one is safe from kidnapping regardless of occupation, race, gender, or age, and that a recent outbreak of cholera has killed thousands. *U.S. Department of State, Travel Warning – Haiti*, dated January 20, 2011.

Based on the designation of TPS for Haiti and the Department of State's Travel Warning, the AAO finds that requiring the applicant's wife to join the applicant in Haiti would result in extreme hardship. For the same reasons, the AAO finds that the applicant's wife would also experience extreme hardship were she to remain in the United States without the applicant. This finding is based on the extreme emotional harm she 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.

Extreme hardship, once established, does not create an entitlement to a waiver of inadmissibility, but is one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996). The Secretary of the Department of Homeland Security has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 566 (BIA 1999). In discretionary matters, the applicant 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 . . . 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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). . . .

*Matter of Mendez-Moralez*, 21 I&N Dec. at 301. 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).

In this case, documentation in the record shows that the applicant assisted in or otherwise participated in the persecution of others. The record contains transcripts of the applicant’s exclusion hearings before an immigration judge. The transcripts show that the applicant testified, under oath, that he worked for ██████████, a Macoute member, from November 1991 to December 1994 in Haiti. The applicant testified, *inter alia*, that his job consisted of reporting to ██████████ the names of individuals who were talking against ██████████ and that ██████████ would beat them up as a result. The immigration judge specifically found that the applicant “rendered [assistance] to ██████████ in oppressing the people in the community where he lived” and ordered him excluded from the United States. *Oral Decision of the Immigration Judge*, dated January 12, 1996. The AAO notes that although the applicant now denies knowing or working for ██████████, *Statement of Appellant*, dated July 23, 2010, significantly, the record shows that the applicant appealed the immigration judge’s decision to the Board of Immigration Appeals (BIA), without challenging this finding. *Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge*, dated January 18, 1996. The BIA dismissed the applicant’s appeal on February 21, 1997. The record further shows that on May 22, 1997, the applicant failed to appear for his removal as ordered.

Therefore, the adverse factors in this case are the applicant’s attempt to enter the United States using a fraudulent passport, evidence the applicant assisted in the persecution of others, failing to depart the United States as ordered, and remaining unlawfully in the United States for over fourteen years, working without authorization. In addition, the AAO notes that the applicant and his wife married on November 19, 2007, more than ten years after the applicant was ordered excluded. Therefore, the equity of their marriage, and the weight given to any hardship the applicant’s wife may experience, is diminished as they began their relationship with the knowledge that the applicant had already been ordered excluded. *See Ghassan v. INS*, 972 F.2d 631, 634-35 (5<sup>th</sup> Cir. 1992) (finding it was proper to give diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien’s possible deportation); *Garcia-Lopes v. INS*, 923 F.2d 72, 76 (7<sup>th</sup> Cir. 1991) (less weight is given to equities acquired after a deportation order has been entered); *Carnalla-Munoz v. INS*, 627 F.2d 1004, 1007 (9<sup>th</sup> Cir. 1980) (a “post-deportation equity” need not be accorded great weight). Moreover, there is no evidence in the record that the applicant provides any value or service to the community and there are no letters of support in the record attesting to the applicant’s good character.

The favorable and mitigating factors in the present case include the extreme hardship to the applicant’s wife if the applicant were refused admission and the fact that the applicant has not had any arrests or convictions.

After balancing all of the positive and negative factors, the AAO finds that the applicant has not met his burden of establishing that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. The AAO recognizes that the applicant’s wife will suffer extreme hardship as a result of the denial of the applicant’s waiver request and is sympathetic to her situation. However, the

applicant has not shown that the grant of relief in the exercise of discretion appears to be in the best interests of this country. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.