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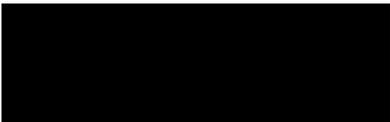
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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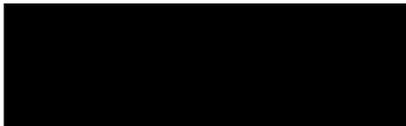
Office: NEW YORK, NY
(GARDEN CITY)

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 District Director, New York, New York, 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 procuring entry into the United States through fraud or the willful misrepresentation of a material fact. The record reflects that the applicant is the spouse of a United States citizen and is the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States with her spouse.

The district director found that the applicant had failed to establish that the bar to her admission would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the District Director*, dated November 20, 2008.

On appeal, counsel asserts that denial of the applicant's waiver request will result in extreme hardship to her spouse. *Form I-290B, Notice of Appeal or Motion*, dated December 18, 2008; *see also Counsel's brief*.

The record includes, but is not limited to, a letter from the applicant's spouse; counsel's brief in support of the waiver application; psychological evaluations of the applicant's spouse; a letter from the applicant's spouse's employer; tax returns, bank statements, W-2 and Earnings Statements, and other financial documents; electric and gas bills; and country conditions material on Jamaica. The entire record was reviewed and all relevant information considered in reaching a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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.

The record establishes that the applicant entered the United States on November 2, 2004 with a passport and visa belonging to another person. Accordingly, she is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for having obtained an immigration benefit through fraud or the willful misrepresentation of a material fact and must seek a section 212(i) waiver.

Section 212(i) of the Act provides that:

- (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 an applicant or other family members 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-Moralez*, 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.

The AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

On appeal, counsel claims that the applicant's spouse previously suffered from drug and alcohol abuse, and that he became sober and began to lead a productive life when he met the applicant. Counsel contends that if the applicant's spouse remains in the United States without the applicant, he would "surely revert back to his old self and resume his addiction to alcohol and drugs." Counsel states that the applicant's spouse has been receiving treatment from psychologist [REDACTED] for depression, that he had sought treatment before the applicant's immigration applications were filed and that after the denial of the applicant's wife's waiver application, he sought additional counseling for depression.

In support of counsel's claim that the applicant's spouse is suffering from depression, the record includes three psychological evaluations of the applicant's spouse prepared by two psychologists – [REDACTED] and [REDACTED].

In his first evaluation dated February 28, 2008, [REDACTED] states that after interviewing the applicant's spouse on February 27, 2008, he concluded that the applicant's spouse is suffering from "Adjustment Disorder with Mixed Anxiety and Depressed Mood," due to his fear of separation from the applicant. [REDACTED] states that the applicant's spouse reported that when he thinks of the consequences of being separated from the applicant, he becomes depressed and nervous. [REDACTED] also indicates that the applicant's spouse has difficulty sleeping at night; has poor appetite; has lost ten pounds; has difficulty focusing, concentrating and paying attention; is persistently sad; is chronically anxious; has crying spells and suffers from diminished sexual libido.

In a subsequent evaluation dated December 16, 2008, [REDACTED] states that the applicant and his spouse consulted him after receiving the denial of the applicant's waiver. [REDACTED] reports that the applicant's spouse's symptomatology has evolved from Adjustment Disorder with Mixed Anxiety and Depressed Mood into a Major Depressive Disorder. He also states that the applicant's spouse suffers from hypertension and diabetes, for which he is on medication; that the applicant's spouse's mother has

diabetes, hearing problems and breast cancer; and that the applicant's spouse assists his mother financially. [REDACTED] notes that because of the applicant's spouse's increased depressive symptomatology, he has referred him to a psychologist for psychotherapy.

In a December 19, 2008 letter, [REDACTED] states that she is treating the applicant's spouse in Cognitive Behavioral Therapy because he is experiencing high levels of depressive symptomatology. [REDACTED] reports that the applicant's spouse's depression is rooted in the realistic fear that he will be physically separated from his spouse and finds that separation from the applicant would severely escalate his current depressive symptomatology and gravely threaten his current state of healthy stability.

Although the AAO notes counsel's claims about past substance abuse by the applicant's spouse, we find no evidence in the record to support them. The record does not contain medical records, reports or statements to establish that the applicant's spouse had substance abuse problems in the past. The assertions of counsel without supporting documentation are not sufficient to meet the burden of proof in this proceeding. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, the record does not establish that the applicant's spouse was previously addicted to drugs or alcohol or that he would revert to abusing drugs and/or alcohol in the applicant's absence.

The AAO does, however find, the record to contain sufficient evidence that the applicant's spouse is experiencing significant emotional hardship as a result of his fear of separation from the applicant and that his current mental status would further deteriorate upon separation. Consequently, when the applicant's current mental and emotional hardships are added to the difficulties and disruptions normally created by the removal or exclusion of a family member, the AAO concludes that the applicant's spouse would experience extreme hardship if he continues to reside in the United States without the applicant.

Counsel claims that the applicant's spouse would suffer extreme hardship if he relocates to Jamaica to live with the applicant. Counsel asserts that the applicant's spouse suffers from mental illness, is receiving treatment in the United States and that if he relocates to Jamaica with the applicant, he would not be able to obtain the necessary medical treatment. Counsel also contends that if the applicant's spouse moves to Jamaica with the applicant, he will not be able to obtain the proper treatment "to continue living his life clean and sober." She further states that the applicant's spouse would experience hardship upon relocation as he knows no one in Jamaica other than the applicant. Counsel contends that the applicant's spouse cannot relocate to Jamaica as there would be no one to care for his U.S. citizen mother who is suffering from depression and breast cancer.

In support of these claims, the record contains Country Specific Information on Jamaica, published by the United States Department of State, dated November 25, 2008, and the psychological evaluations prepared by [REDACTED] and [REDACTED]. While the AAO notes these documents in the record, we find them to offer insufficient proof of extreme hardship.

The Department of State report on Jamaica provides a general overview of conditions in Jamaica to U.S. citizens traveling to Jamaica. The report states that medical care in Jamaica is more limited than in the

United States, that serious medical problems requiring hospitalization and/or evacuation to the United States can be expensive, and that doctors in Jamaica often require cash payment prior to providing services.

As previously discussed, the AAO has found the record to establish the applicant's spouse is suffering from mental health problems. However, the submitted psychological evaluations have identified his *depression and anxiety* as rooted in his fear of separation from his spouse, which would not be a factor if he returns to Jamaica with the applicant. Further, the AAO again notes that there is no evidence in the record, e.g., medical records or a letter from the applicant's spouse's employer, to support counsel's claim that the applicant's spouse has had drug and alcohol problems for which he is receiving treatment. Neither is there any proof that he suffers from diabetes or hypertension as indicated by [REDACTED] in his December 16, 2008 evaluation. Accordingly, the record offers insufficient proof that the applicant's spouse suffers from any medical condition, mental or physical, for which he would require treatment if he relocates to Jamaica.

As to counsel's claim that the applicant's spouse cannot relocate to Jamaica because of his obligations to his sick mother, the AAO again finds no evidence in the record to support this claim. The record does not contain any statement or medical record that establishes any health problems on the part of the applicant's spouse's mother, that she needs someone to care for her, or that the applicant is her only caregiver. The record also fails to document that the applicant's spouse is financially assisting his mother. Consequently, the AAO must conclude that the applicant has failed to demonstrate that her spouse would experience extreme hardship if he relocates to Jamaica.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if separated from the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. 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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

Accordingly, the AAO finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.



ORDER: The appeal is dismissed.