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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

H5



DATE: OCT 12 2011

Office: PHILADELPHIA

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:

SELF-REPRESENTED

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,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Officer 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 and is inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or misrepresentation due to her use of a fraudulent passport to gain admission to the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen husband. The applicant seeks a waiver of inadmissibility pursuant to INA § 212(i), 8 U.S.C. § 1182(i).

In a decision dated April 11, 2011, the Field Office Director concluded that the required standard of proof of extreme hardship to the applicant's U.S. citizen spouse was not met and the application was denied accordingly.

In her appeal, the applicant expresses remorse for the actions that led to her inadmissibility and states that she and her family would suffer extreme hardship if she is not permitted to obtain lawful permanent residence and remain in the United States. On appeal, the applicant submitted two statements written by her and newspaper articles dating from 2009 regarding country conditions in Jamaica.

In addition to the documentation submitted on appeal, the record contains, among other documentation, an approved Petition for Alien Relative (Form I-130) filed on the applicant's behalf by her U.S. citizen husband, Application for Adjustment of Status to Lawful Permanent Resident (Form I-485), Application for Waiver of Grounds of Inadmissibility (Form I-601), Affidavit of Support (Form I-864), Biographical Information (Forms G-325A) for the applicant and her spouse, documentation regarding the applicant's criminal record in [REDACTED], [REDACTED], an undated letter from the applicant's spouse, tax returns filed by the applicant's spouse, a letter from the applicant's spouse's employer, additional letters from the applicant, undated letters from individuals who know the applicant, bank statements for the applicant and her spouse, telephone and utility bills; insurance documents for the applicant, her spouse and their children; and medical records for routine health care for the applicant's children. Also included is the applicant's marriage certificate, birth certificates of her children, a birth certificate for the applicant, and the applicant's spouse's divorce certificate from his prior marriage.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The record establishes that the applicant was convicted of Retail Theft, in violation of section [REDACTED] of the [REDACTED] Criminal Code, on [REDACTED] in the Criminal Division of the Court of Common Pleas of [REDACTED]. The applicant's charge was for a summary offense, a lesser crime than a misdemeanor. She pled guilty and paid a \$200 fine. The

maximum possible punishment for a summary offense in [REDACTED] is 90 days imprisonment. 18 Pa.C.S.A. § 1105. On August 18, 2010, the applicant's record was expunged.

Section 212(a)(2) of the Act provides, in pertinent part:

(A)(i) Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or...

is inadmissible.

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

....

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

This conviction for Retail Theft qualifies for the petty offense exception under INA § 212(a)(2)(A)(ii)(II), 8 U.S.C. § 1182(a)(2)(A)(ii)(II), as the maximum penalty possible for her conviction did not exceed one year and she was not sentenced to any imprisonment. As such, the applicant is not inadmissible under under INA § 212(a)(2)(A)(i)(I), 8 U.S.C. § 1182(a)(2)(A)(i)(I).

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.

October 23, 1997 the applicant presented herself at a U.S. port of entry in [REDACTED] using a passport and visa in the name of [REDACTED]. The applicant had substituted her photo on the visa. The visa stated that she was traveling to the United States to attend the funeral of her mother in [REDACTED]. She was admitted to the United States as [REDACTED]. In fact, the applicant's true and full name is [REDACTED] and, according to the record, her mother is not deceased, but rather resides in Jamaica. As a result of this fraud and misrepresentation of a material fact, the applicant is inadmissible under INA § 212(a)(6)(C)(i). The applicant does not contest this finding of inadmissibility.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [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 [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.

The applicant's qualifying relative in this case is her U.S. citizen husband. Congress did not include hardship to the applicant or to the applicant's children as a factor to be considered in assessing extreme hardship in cases under INA § 212(i) for waivers of fraud or misrepresentation. Hardship to the applicant or to the applicant's children will not be separately considered, except as it may affect the applicant's spouse. 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).

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 an undated letter, the applicant’s U.S. citizen spouse states that he will suffer emotional and physical hardship if his wife is not permitted to remain in the United States with him. In particular, he states that he depends on his wife to care for the children, the daughter that they have together, and the applicant’s son from a previous relationship. He states that he works evenings and he would not want to leave the children with a caregiver as he fears that they could receive substandard care. This claim, however, is not supported by any evidence. In fact, the evidence seems to contradict the applicant’s spouse’s claim. The 2009 Federal Tax Return he submitted indicates that he claimed a deduction for dependent care for his children. Thus, it is unclear to what extent the applicant’s spouse views leaving his children with caregivers other than their mother a hardship, and the applicant has not provided any evidence to illustrate that no suitable caregiver is available, or to demonstrate the financial burden, if any, of obtaining care. Accordingly, the AAO is unable to determine the weight to assign this hardship, which is itself a common result of separation, in considering hardship in the aggregate.

The applicant’s U.S. citizen spouse also claims medical and physical hardship should the applicant not be able to remain in the United States. He states that he recently underwent a Cystoscopic Urethral Dilation and was required to wear a catheter for a few weeks. He states that he relied on the applicant to care for his “every need” during that time. The only evidence submitted of the U.S. citizen spouse’s medical condition, however, is a form letter from [REDACTED];

██████████, dated March 5, 2010, stating that the U.S. citizen's spouse's test results were normal. There is no indication in the record that the U.S. citizen spouse's health needs are ongoing. The applicant's U.S. citizen spouse states that his parents are deceased and that he therefore relies on his wife to be close by him. If the applicant's spouse believes that he is at particular risk for a certain type of illness and that the loss of his spouse's support would be detrimental to his health, he has not submitted any independent evidence to illustrate that risk.

The applicant's U.S. citizen spouse also claims financial hardship should his wife not be permitted to remain in the United States. The applicant submits evidence that he has been employed by United Airlines since February 26, 2001 and earns an annual salary of \$31,532. It is not clear from the record whether the applicant's spouse depends on any income from the applicant to support their family. It is also not clear from the evidence submitted that the family could not afford to maintain a home in Jamaica. No evidence is submitted as to the costs of their current living situation in ██████████ and only partial costs have been provided for their expenses. Although the costs associated with travel and maintaining two homes are likely greater than what the family currently experiences, without further evidence of such additional expenses, we cannot find that the degree of financial hardship the applicant's spouse would experience is extreme.

In the applicant's letters and her spouse's letter, hardship is claimed to the applicant and the children that the couple raise together. As stated above, however, Congress did not include hardship to the applicant or to the applicant's children as a consideration in the determination of whether an individual should be granted a waiver of inadmissibility. Although the hardships suffered by his children and his spouse may affect the applicant's U.S. citizen spouse emotionally and financially, those hardships have not been documented in the record through costs associated with education in Jamaica or through a medical professional's assessment of any specific effects of the hardship on the qualifying spouse. The AAO acknowledges that the applicant's U.S. citizen spouse will experience emotional hardship if he remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, even when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship described by the applicant and her spouse and as demonstrated by the evidence in the record, is the common result of removal or inadmissibility and does not rise to the level of extreme hardship.

We must also consider whether the applicant's U.S. citizen spouse would suffer extreme hardship should he relocate to Jamaica. The applicant has submitted several newspaper articles regarding the difficult economic and public safety situation in Jamaica. How the conditions in Jamaica will affect the applicant's spouse in particular, however, is not demonstrated in the record. The applicant's U.S. citizen spouse is a native of Jamaica, but the record does not demonstrate at what age he came to the United States and if he had a profession in that country previously. It may be that the applicant will be unable to earn as much as what he earns at his current position for United Airlines, but we cannot determine what his income would be in Jamaica based on the evidence provided. We also cannot determine from the record what the family's expenses would be in Jamaica. The applicant's spouse in his letter states that the minimum wage in Jamaica is 47 U.S. dollars per week, but no evidence is provided to prove that assertion or to explain what type of

work the applicant's spouse would be able to obtain in Jamaica and what the wage is for that particular work. Additionally, the applicant's spouse states that having good health care and education for his children is important to him, but he has not provided evidence that he would not be able to provide his children with health care and education in Jamaica, and if he were not able to do that how that would affect him personally. There is evidence in the record that the applicant's U.S. citizen spouse has a child from his previous marriage, but no evidence is provided to illustrate whether he has formal custody of that child, if he has child support obligations to that child or how relocation to Jamaica would affect his ability to fulfill those obligations. As such, hardship based on those factors cannot be found. All evidence in the record of hardship to the applicant's spouse, should he relocate to Jamaica, has been considered in aggregate. Based on the foregoing, the applicant has not shown that her husband will endure extreme hardship should he join her in Jamaica.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is not granted a waiver of inadmissibility. Although the AAO acknowledges that the applicant's U.S. citizen spouse will suffer hardship, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief under section 212(i) of the Act, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.