



U.S. Citizenship  
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[REDACTED]

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DATE: Office: PHILADELPHIA, PA

FILE [REDACTED]

OCT 21 2011

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

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 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 a citizen of Jamaica who used the passport of another person to enter the United States in 2000. The applicant 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). She is the spouse of a U.S. citizen and has two U.S. citizen children. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on March 19, 2009. The Field Office Director also noted that the applicant may be inadmissible under section 212(a)(9)(C) of the Act for having re-entered the United States without inspection after having been previously removed under section 235(b)(1) of the Act.

On appeal, counsel for the applicant asserts that the Field Office Director applied the wrong legal standard in adjudicating the applicant's waiver. *Form I-290B*, received April 17, 2009.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (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 chapter is inadmissible.

The record indicates that the applicant attempted to enter the United States on August 30, 1998, using the passport of another person. She was detained and then removed in an expedited removal proceeding under section 235(b)(1) of the Act on August 30, 1998. *Notice to Alien Ordered Removed/Verification of Departure*, Form I-867, dated August 30, 1998. The applicant subsequently re-entered the United States using the passport of another person, married her spouse and filed an I-130 on September 19, 2001.

The record contains, but is not limited to, the following evidence: several statements from counsel for the applicant; statements from the applicant's spouse; country conditions materials on Jamaica; employment verification letters for the applicant's spouse; a statement from [REDACTED] pertaining to the applicant's spouse; a statement from the applicant's spouse's mother; and copies of birth certificates for the applicant's daughters.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

- (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 the applicant or her children 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.

Counsel for the applicant asserts on appeal that the applicant’s spouse was born in the United States, has significant family ties in the United States and no family ties in Jamaica. *Brief in Support of Appeal*, dated April 17, 2009. Counsel also asserts that the applicant’s spouse has worked at the U.S. Post Office for 16 years and would lose his benefits if he had to relocate to Jamaica with the applicant. He also asserts he would be unable to find employment in Jamaica, and that due to the unsafe social and economic conditions in Jamaica, as well as its lack of educational infrastructure, their daughters would suffer significant hardship.

The applicant’s spouse’s mother has submitted a statement asserting that she is 75 years of age, suffers from high blood pressure, diabetes and heart problems and that the applicant is the one that provides daily care and assistance for her. *Statement by the Applicant’s Spouse’s Mother*, dated October 1, 2008. She further states that the applicant’s spouse works two jobs and would be unable to assist her and that she has no one else who would be capable of caring for her.

The record contains employment documentation for the applicant's spouse establishing that he has worked for the U.S. Post Office for 16 years. The record also establishes that he was born in the United States.

The AAO notes that children are not qualifying relatives in these proceedings, and as such, any impact on them is only relevant to the extent that they impact the qualifying relative, in this case the applicant's spouse. The record contains country conditions materials, including excerpts from the CIA World Factbook and several news periodicals discussing the crime and conditions in Jamaica. While these materials may be sufficient to establish that Jamaica has a lower quality of life and fewer educational resources than the United States, they are not sufficient to establish that the applicant's spouse would be specifically impacted by these conditions or that the conditions are such they exceed the common impacts of relocation to a degree constituting extreme hardship. Nonetheless, the AAO will consider the impact of relocation on the applicant's spouse due to the fact that he would have to leave his long-term employment in the United States and cope with the additional burden of culturally readjusting his daughters to Jamaica after having been born and raised in the United States.

With regard to the impacts on the applicant's spouse's mother, the AAO would note that she is not a qualifying relative. There is no documentation submitted to corroborate her medical conditions and nothing which establishes the level of care or assistance she needs. Nonetheless, the AAO will give due consideration to the fact that the applicant's spouse would have to separate from his elderly mother if he relocated to Jamaica with the applicant.

When the impacts asserted upon relocation are examined in the aggregate, specifically the applicant's spouse's lack of family or other ties in Jamaica, long-term employment in the United States, separation from family members in the United States and cultural adjustment of his daughters, the AAO finds that the applicant has established that her spouse would experience extreme hardship in the event of relocation to Jamaica.

Counsel for the applicant asserts on appeal that the applicant's spouse would experience physical and emotional hardship due to separation if he remained in the United States. *Brief in Support of Appeal*, dated April 17, 2009. He explains that the applicant has been the primary caretaker for their daughters and that the applicant's spouse works two full time jobs and would not be able to care for them, and that he suffers from hypertension.

The applicant's spouse has also submitted a statement indicating that the applicant assists him in managing four properties that they own and in caring for his mother and daughters. *Statement of the Applicant's Spouse*, dated October 1, 2008.

The applicant's spouse's mother has submitted a statement asserting that she is 75 years of age, suffers from high blood pressure, diabetes and heart problems and that the applicant is the one that provides daily care and assistance for her. *Statement by the Applicant's Spouse's Mother*, dated October 1, 2008.

The record contains a statement from Dr. [REDACTED] asserting the applicant's spouse suffers from hypertension which is intermittently controlled with medication. The statement also indicates that the applicant's spouse is otherwise stable and appears to be without injury. This evidence is sufficient to establish that the applicant's spouse suffers from Hypertension, however, it is not evident from the statement that this condition has any substantial impact on his ability to function on a daily basis. As noted above, the applicant's spouse himself states that he continues to work two full time jobs.

The record does not contain any evidence to corroborate the medical conditions of the applicant's spouse's mother. The AAO notes that the record shows that the applicant's spouse earns significant income and it has not been explained why he would not be able to afford any necessary in-home care for his mother. Without evidence which corroborates her medical conditions and the specific need for her to be assisted by the applicant's spouse or the applicant herself, the AAO cannot recognize this inconvenience as a significant hardship factor on the applicant's spouse.

With regard to the caretaking of the applicant's daughters, the AAO notes, as with the applicant's spouse's mother, there is no evidence that the applicant's spouse would be unable to afford child care assistance in order to mitigate the impacts of the applicant's removal.

The record contains employment verification letters and financial records which establish the applicant's spouse holds two jobs and earns significant income. There is no evidence in the record indicating that the applicant's spouse is unable to meet his financial obligations. While the AAO recognizes that it would be an inconvenience to hire professional help for the applicant's spouse's mother or daughters, or for the applicant's spouse to quit one of his jobs so that he may care for his mother and daughters, this does not establish that the applicant's spouse would experience a financial impact distinguishable from that which is commonly experienced by the relatives of inadmissible aliens who remain in the United States.

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 husband faces extreme hardship if his wife is refused admission. The AAO recognizes that the applicant's spouse will have to assume additional parenting duties and care for his mother. These assertions, however, especially in light of the applicant's spouse's income level, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. 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.

Although the applicant has demonstrated that her spouse would experience extreme hardship if he relocated abroad to reside with the applicant, the AAO can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. 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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, the AAO cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *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.