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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**



PUBLIC COPY

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DATE: SEP 14 2011

Office: PHILADELPHIA

FILE: [REDACTED]

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.

Thank you,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved. The matter will be returned to the field office director for continued processing.

The record establishes that the applicant, a native and citizen of Jamaica, attempted to procure entry to the United States in November 1991 by presenting a counterfeit Canadian landed immigrant document. *Record of Sworn Statement*, dated November 23, 1991. In addition, in September 2001, the applicant obtained an H-2B Visa from the U.S. Embassy in Kingston, Jamaica and subsequent entry to the United States by fraud or willful misrepresentation. The applicant was thus 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 having attempted to procure entry into the United States in 1991, and for having obtained a nonimmigrant visa and subsequent entry to the United States in 2001, by fraud or willful misrepresentation.¹ The applicant does not contest the field office director's finding of inadmissibility. Rather, he seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse.

The field district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Inadmissibility (Form I-601) accordingly. *Decision of the Field District Director*, dated February 6, 2009.

In support of the appeal, counsel for the applicant submits a brief, dated March 6, 2009; a copy of the applicant's child's U.S. birth certificate; letters in support from the applicant's spouse's parents and evidence of their lawful status in the United States; documentation establishing the applicant's spouse's sister's U.S. citizenship; an employment confirmation letter pertaining to the applicant; and documentation regarding country conditions in Jamaica. The entire record was reviewed and considered in rendering this decision.

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

¹ The record shows that the applicant was arrested for shoplifting in 2003 and the disposition was A.R.D. (Accelerated Rehabilitative Disposition) Program. The field office director did not address whether or not this conviction is a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Nevertheless, because the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is inadmissible under section 212(a)(2)(A)(i)(I).

admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

- (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 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 (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 U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. 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 applicant’s U.S. citizen spouse contends that she will experience extreme hardship were she to remain in the United States while the applicant relocates abroad due to his inadmissibility. In a declaration, she contends that she loves her husband very much and does not want to live apart from him. She notes that they are best friends and she can talk to him about anything because he is trustworthy and honest. In addition, the applicant’s spouse contends that her two children will suffer emotional hardship due to long-term separation from their father, thereby causing her hardship. Finally, the applicant’s spouse asserts that there are few or no jobs in Jamaica and it would be impossible for the applicant to support his family from abroad. *Affidavit of* [REDACTED] dated March 16, 2007.

In support, letters have been provided from the applicant’s spouse’s U.S. citizen father and lawful permanent resident mother establishing that the applicant’s spouse was recently laid off and relies on the applicant for financial support. Said letters also outline the significant role the applicant plays in his family’s lives. *Letters from* [REDACTED] In addition, a letter has

been provided from [REDACTED] [REDACTED] establishing the applicant's gainful employment, since February 2006, as a painter, providing complete financial support to his family since his wife was laid off in June 2007. *Letter from* [REDACTED] [REDACTED] dated February 26, 2009. Moreover, documentation has been provided from counsel outlining the high unemployment rate in Jamaica to support the applicant's spouse's assertion that her husband will not be able to provide financial support to his family were he to relocate abroad. Finally, a letter has been provided from the applicant's child's principal, [REDACTED] confirms that the applicant's child, a 5th grade student, is a hardworking, conscientious student with an excellent attendance record and strong and positive relationships in his classroom and in his community. [REDACTED] goes on to conclude that it would be very disruptive to the applicant's child were his father to leave the country at this stage of his development. *Letter from* [REDACTED] *Public School*, dated December 8, 2005.

The record reflects that the cumulative effect of the emotional and financial hardship the applicant's spouse would experience due to the applicant's inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, the applicant's spouse would suffer extreme hardship.

The applicant's U.S. citizen spouse asserts that she does not want to relocate to Jamaica as she and her children will suffer, thereby causing her hardship. She explains that she does not want to go to Jamaica to live as she has nothing there. She further explains that her elder son, born in 1994, only knows the United States and a relocation would cause him, and by extension her, hardship. Moreover, the applicant's spouse references the problematic country conditions in Jamaica, including high unemployment. *Affidavit of* [REDACTED], dated November 10, 2005. On appeal, counsel further references the extensive ties the applicant's spouse has to the United States, including the presence of her U.S. citizen father, her lawful permanent resident mother and her U.S. citizen sister. Counsel also contends that due to the high unemployment rate, the applicant's spouse and children will suffer. Finally, counsel explains that violent crime is a serious concern in Jamaica. *Brief in Support of Appeal*, dated March 6, 2009.

The record establishes that the applicant's child, currently 16 years old, is integrated into the United States lifestyle and educational system. The Board of Immigration Appeals (BIA) found that a fifteen-year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the applicant's elder child at this stage of his education and social development and relocate him to Jamaica would constitute extreme hardship to him, and by extension, to the applicant's spouse, the only qualifying relative in this case. In addition, the record reflects that the applicant's spouse has been residing in the United States for almost a decade. Were she to relocate abroad to reside with the applicant, she would have to adjust to a country with which she is no longer familiar. She would have to leave her community and her family, including her parents and sibling, and she would be concerned for her

and her children's safety and well-being in Jamaica. Moreover, the applicant's spouse would not be able to maintain her quality of living due to the substandard economy in Jamaica. Finally, the U.S. Department of State corroborates counsel's assertion regarding the high rate of violent crime and violence in Jamaica. *Country Specific Information-Jamaica, U.S. Department of State*, dated February 24, 2011. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). 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).

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and children would face if the applicant were to reside in Jamaica, regardless of whether they accompanied the applicant or stayed in the United States, his community ties, his long-term gainful

employment, support letters from the applicant's in-laws, his payment of taxes, and the passage of more than nine years since his entry to the United States by fraud or willful misrepresentation. The unfavorable factors in this matter are the applicant's fraud or will misrepresentation in 1991 and 2001, as detailed above, his periods of unlawful presence and unlawful employment while in the United States and his arrest and conviction in 2003.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the I-601 waiver application approved.

ORDER: The appeal is sustained. The waiver application is approved. The field office director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.