

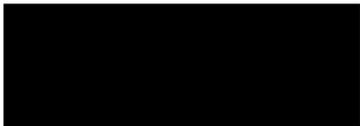
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

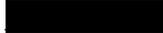


**U.S. Citizenship
and Immigration
Services**



H5

DATE: **APR 03 2012** OFFICE: NEW YORK, NEW YORK

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:

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 having procured admission through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through prior counsel, contests the finding of inadmissibility, but 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 her husband.¹

The District Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the District Director*, dated July 24, 2009.

On appeal, the applicant asserts that her waiver should be granted given that the misrepresentation was not willful or intentional and that she has demonstrated mitigating circumstances that warrant a waiver. *See Form I-290B, Notice of Appeal or Motion*, dated August 24, 2009.

The record includes, but is not limited to: a motion from prior counsel; letters of support; and identity, certification, financial, employment, and medical documents. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(C) Misrepresentation.-

(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 Act is inadmissible.

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

¹ Although the record includes a Form G-28, Notice of Entry of Appearance as Attorney or Representative, from [REDACTED] the AAO will consider the applicant to be self-represented as [REDACTED] is currently suspended from practicing before the Department of Homeland Security.

The District Director found the applicant inadmissible under section 212(a)(6)(C) of the Act, in part, for having presented to U.S. immigration officials her Jamaican passport that contained a fraudulent I-551 stamp on September 4, 1995. The record supports the finding, and the AAO concurs that the misrepresentation was material. The applicant has not disputed the presentation of the fraudulent I-551 stamp on appeal.

The District Director also found the applicant inadmissible under section 212(a)(6)(C) of the Act for having submitted to the legacy Immigration and Naturalization Service (INS) (now the United States Citizenship and Immigration Services) a fraudulent marriage certificate as documentary evidence in support of the Application to Register Permanent Residence or Adjust Status (Form I-485) and Form I-130 identifying her as the spouse of a U.S. citizen, John Ramer.

On appeal, the applicant disavows any knowledge of [REDACTED] or having ever represented that she was married to him. The applicant also states that [REDACTED] was to assist her with obtaining her "green card" and that she believed that since he was a "man of the cloth", he would not give her incorrect or illegal information. Accordingly, she completed the appropriate information on the forms given to her. The AAO notes that the applicant signed the Form I-485 that was submitted jointly with the Form I-130 on her behalf as the spouse of [REDACTED] and in so doing, certified under penalty of perjury that the application and the evidence submitted with it are true and correct. Therefore, the AAO finds that the applicant is responsible for the material misrepresentations made in connection with those forms.

Based on the applicant's presentation of a fraudulent Form I-551 stamp and the false information provided in support of her previous Form I-130 and I-485, the AAO finds the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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

- (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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant 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. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 contends that the refusal of her admission to the United States would result in extreme hardship to her spouse, and in support of the contention, has submitted copies of their tax returns; billing statements; banks accounts; her nursing-related certifications and training programs; and her medical record. The AAO notes that the applicant's spouse may experience some hardship because of separation from the applicant. However, the record does not establish that the hardship that the spouse may experience goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. There is no evidence in the record that the spouse is unable to financially support his household or to meet his financial obligations in the applicant's absence. Also, the record does not contain any country conditions information concerning the applicant's employment opportunities in Jamaica to support hers and the spouse's households. And, while the record demonstrates that the applicant has a slightly enlarged heart, there is no evidence that the applicant requires ongoing medical care and that such treatment is unavailable in Jamaica, or that she is currently experiencing symptoms that require the spouse's assistance.

The AAO recognizes that the applicant's spouse may experience some hardships as a result of separation from the applicant. However, the AAO finds that even when these hardships are considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of separation from the applicant.

Additionally, the AAO notes that the applicant does not address whether her spouse would experience extreme hardship if he were to relocate to Jamaica because of her inadmissibility. Nevertheless, the record reflects that the applicant's spouse is a native of Jamaica and that the record does not include any evidence whether he continues to maintain social or financial ties there. Also, the record does not include any country conditions information concerning economic, political, or social conditions and employment opportunities in Jamaica and how such conditions would impact the spouse.

Although the applicant's spouse may experience some hardships as a result of relocation to Jamaica with the applicant, the AAO finds that even when these hardships are considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of relocation with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(6)(C)(i) of the Act. As the applicant has not established extreme hardship to a qualifying

family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.