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



U.S. Citizenship
and Immigration
Services



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DATE: **APR 05 2012**

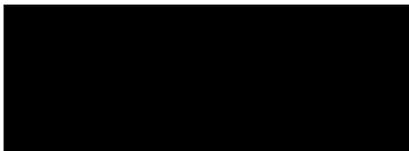
OFFICE: NEWARK

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:



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 Office Director, Newark, New Jersey, 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 entered the United States with a passport in the name of another individual on December 24, 2003. The Field Office Director found the applicant 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 procured entry to the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child¹.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated August 19, 2009.

On appeal, the applicant's spouse asserts that she cannot relocate to Jamaica with her husband because they would have no place to live and not enough income to pay her debts in the United States, and their daughter would not receive education equivalent to that available in the United States. The applicant's spouse further asserts that she cannot be separated from the applicant because he supports her emotionally, especially since the death of her father in March 2009.

In support of the waiver application and appeal, the applicant submitted a letter from a psychologist concerning his spouse, financial and employment documentation, letters from his spouse, a letter from his pastor, identity documents, and an affidavit from the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

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

¹ The applicant's Form I-485 indicates that he is the father of four children in total. The applicant has one child in common with his current spouse. The record indicates that, of his other children, two were born in Jamaica and one was born in the United States. The record indicates that the applicant is only residing with the child he shares with his current spouse.

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...

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.

In the present case, the record reflects that the applicant is a thirty-eight year-old native and citizen of Jamaica. The applicant's spouse is a twenty-nine year-old native and citizen of the United States. The applicant and his spouse are currently residing in Newark, New Jersey, with their child.

The applicant's qualifying relative in this case is his U.S. citizen spouse. The record contains references to hardship the applicant's child or stepmother would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant's child or stepmother as factors to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child or stepmother will not be separately considered, except as it may affect the applicant's spouse.

The applicant's spouse asserts that she is an emotional eater and anticipating that her husband may not be allowed to remain in the United States has filled her with grief so that she eats and has stopped going to the gym. The applicant's spouse further asserts that the applicant emotionally supported her through the death of her father and that she cannot imagine living without him. In support of her assertions, the applicant's spouse submitted a letter from a psychologist stating that the effects of her father's death in March 2009 manifested in symptoms of major depressive disorder. According to the psychologist, the applicant's spouse suffered exacerbation of her eating disorder, insomnia, suicidal ideation, crying, and difficulty concentrating, which could affect her employment. The psychologist also noted that the applicant's mother suffers from arthritis and the applicant assists in her care and chores. Initially, it is noted that the applicant's mother is not a qualifying relative in the context of this application and any hardship she would suffer will be considered only insofar as it affects the applicant's spouse. Further, there is no medical documentation in the record concerning the applicant's mother and no letter written by the applicant's mother in support of the application.

The applicant's spouse states that the year of her father's death was the hardest she had to endure in her life, as her father's health deteriorated through months in a hospital, rehabilitation center, and his home. It is noted that the submitted psychologist's letter is dated October 15, 2009, less

than a year after the applicant's spouse's father's death, and the record does not contain any information concerning treatment for the applicant's spouse or whether she is currently undergoing therapy. Further, there is a letter submitted from the applicant's spouse's employer concerning her annual salary, but there is no indication that the applicant's spouse's emotional hardships ever affected the quality of her work performance. It is acknowledged that separation from a spouse nearly always creates a level of hardship for both parties and the record indicates that the applicant's spouse would suffer emotional hardship if she were separated from the applicant. However, the evidence does not support the assertion that the emotional hardship suffered by the applicant's spouse would be so serious that it would interfere with her ability to continue in her employment or otherwise carry out her daily activities. There is insufficient evidence in the record to find that the applicant's spouse would suffer a level of hardship beyond the common results of inadmissibility or removal if she were separated from the applicant.

The applicant's spouse asserts that she cannot relocate to Jamaica because she is tied to the United States by her student and car loans and her profession as a teacher. The applicant's spouse also states that if she moved to Jamaica, they would have no place to live and little income, and her daughter would not receive the benefit of a quality education in the United States. It is noted that the applicant's spouse resided in Jamaica for over five years, between grades six and twelve. She states that she lived in Jamaica, like the applicant, but that he lived in an unsafe area of Kingston while she lived in the country. It is noted that the applicant has family members that currently reside in Jamaica and there is no indication regarding whether they would be able to provide the applicant's family with assistance upon relocation. It is also noted that the applicant's spouse was educated for approximately six years in Jamaica and is currently employed as a teacher, suggesting that her education in Jamaica was adequate. Further, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, it is not enough by itself to justify an extreme hardship determination. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). The record contains insufficient evidence to find that the applicant's spouse would suffer hardship beyond the common consequences of inadmissibility or removal if she relocated to Jamaica.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish

extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise 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 his U.S. citizen spouse as required under section 212(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(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.