

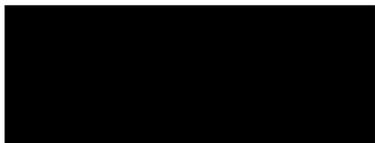
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services



ht5

Date: **APR 19 2012**

Office: PROVIDENCE, RI

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,

Perry New
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Johnston, Rhode Island. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Haiti and citizen of Canada who provided a Haitian passport with a valid Border Crossing Card that belonged to his brother on August 5, 2001 in an attempt to obtain admission to the United States. As such, he is 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 seeking to procure a visa to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130), and his wife, a United States citizen, is his petitioner. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his wife.

The Field Office Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in extreme hardship to the qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated August 21, 2009.

On appeal, the applicant contends through counsel¹ that the qualifying spouse has a medical hardship and depends upon the applicant. In addition to medical hardship, the applicant indicates that the qualifying spouse would suffer emotionally because of the separation from her step-son and the applicant. The applicant and qualifying spouse also contend that the qualifying spouse will suffer financial hardship both upon separation from the applicant and upon relocation.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), Form I-130, letters from the qualifying relative, medical records, reference letters, financial documentation and other documents provided with the Application to Register Permanent Residence or Adjust Status (Form I-485). 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.

¹ The AAO notes that [REDACTED] of Boston, Massachusetts, entered an appearance in this case. *See Form G-28, Notice of Entry of Appearance of Attorney or Representative*, dated September 18, 2009. [REDACTED] was suspended from the practice of law before the Department of Homeland Security and the Executive Office for Immigration Review on October 25, 2011, and he has not been reinstated. [REDACTED]

Section 212(i) of the Act provides:

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 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 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), 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. The applicant's wife 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-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).

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 AAO finds that the applicant has failed to establish that his qualifying spouse will suffer extreme hardship as a consequence of being separated from him. The applicant asserts that the qualifying spouse currently suffers and would suffer medical hardships due to the applicant’s inadmissibility. According to the applicant’s spouse, as a result of her cluster headaches, she relies upon the applicant to ensure that she is on time for her job, to assist her with getting ready in the morning and to get home from work. Medical documents confirm that the qualifying spouse has headaches and that she takes medication for them. However, there is very little detail regarding the severity of these headaches. Further, other than a statement made by the applicant’s spouse, the medical records do not indicate the necessity of the applicant to assist the qualifying spouse. The applicant’s spouse’s assertions are evidence and will be considered. However, going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, the applicant’s spouse was diagnosed with cluster headaches in 2004 and the record indicates that the applicant did not live in the United States until 2007, so it appears that she managed her medical condition without the applicant’s assistance. The qualifying spouse also states in one of her letters that it would be difficult for her to travel to visit the applicant in Canada

because of her medical problems as well as her schedule as a nursing student. However, she does not explain why her headaches or classes would prevent her from visiting her husband.

The qualifying spouse also indicates how difficult emotionally it will be if the applicant left the United States and the qualifying spouse would no longer be able to see her step-son. However, the step-son lives in the United States and it appears that the applicant has a good relationship with his mother. As such, it is unclear why the applicant's spouse could not continue her relationship with her step-son upon the applicant's return to Canada. In addition, progress notes from a social worker indicate that the applicant's spouse has been experiencing stress, anxiety, depression and difficulty sleeping and concentrating. However, the notes conclude that the qualifying spouse has "mild symptoms" and is "generally functioning pretty well."

Lastly, the qualifying spouse indicates that she needs the applicant to help her with her expenses. However, the applicant's Biographic Information form (Form G-325A) indicates that he is unemployed, and the financial documentation, such as tax returns, only reflect income earned by the applicant's spouse. As such, there is not sufficient evidence to confirm that the applicant's spouse receives or requires financial assistance from the applicant. Moreover, other than statements made by the applicant, there is no indication from the record that the qualifying spouse's expenses would exceed her income as a result of the applicant leaving the United States. As such, the applicant failed to provide sufficient evidence to establish that the qualifying spouse is suffering medical, emotional or financial hardships as a result of her separation from the applicant.

The AAO also finds that the applicant has not established that his qualifying relative would suffer extreme hardship were she to relocate to be with the applicant in Canada. The applicant's spouse would have to leave her job, which she has held since 2001. However, the applicant's spouse also indicated in her first letter, dated June 1, 2009, that she has two years left to complete a nursing degree, and she presumably has finished her degree. The record lacks evidence of her ability to find employment in the Canadian job market, given her education and experience. 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, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."). As such, the applicant has not provided sufficient evidence to show that his spouse's cumulative hardships would result in extreme hardship upon separation or relocation.

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 her qualifying spouse as required under section 212(a)(9)(B) 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)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *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.