



U.S. Citizenship
and Immigration
Services

[REDACTED]

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DATE: **DEC 08 2012** OFFICE: WEST PALM BEACH FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, West Palm Beach, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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), due to his procurement of admission to the United States through fraud or material misrepresentation. The applicant seeks a waiver of inadmissibility (Form I-601) under 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.

In a decision dated July 26, 2011, the Field Office Director found that the applicant did not establish extreme hardship to his qualifying relative and the application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility, but states that extreme hardship will result to the applicant's U.S. citizen spouse if the applicant is not admitted for lawful permanent residence. Counsel states that the Field Office Director mischaracterized and misinterpreted the evidence.

In support of the waiver application, the record includes, but is not limited to legal arguments by the applicant's counsel, biographical information for the applicant and his spouse, affidavits from the applicant's spouse, a psychological report concerning the applicant's spouse, letters from the applicant's spouse's primary care physician, a record of the applicant's spouse's radiological consultation, information concerning sickle cell disease and anemia, a human rights report concerning Jamaica, information concerning the applicant's spouse's employment, limited financial information for the applicant and his spouse, photographs of the applicant and his family, and documentation regarding the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant was found to be inadmissible under section 212(a)(6)(C) of the Act, which 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.

The applicant states that he obtained admission to the on December 14, 2001 pursuant to the then Pilot Visa Waiver Program using a British passport issued to another individual. The applicant states that he substituted his photograph in the passport. The AAO finds that the applicant is

inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation of a material fact. The applicant does not contest his inadmissibility on appeal.

Section 212(i) of the Act provides a waiver for section 212(a)(6)(C). That section states that:

(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 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.

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 U.S. citizen or lawful permanent resident spouse or parent. In this case, the applicant's qualifying relative is his U.S. citizen spouse. Hardship to the applicant or his children is not considered in 212(i) waiver proceedings unless it is shown to cause hardship to a qualifying relative. If extreme hardship to his 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 deportation, 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, 885 (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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998)(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.

On appeal, counsel for the applicant states that the applicant’s U.S. citizen spouse will suffer extreme hardship if the applicant is not granted a waiver of inadmissibility. Counsel states that the applicant’s spouse suffers from sickle cell disease and that she relies on the applicant to carry out her daily activities. Counsel also states that the applicant’s spouse “suffers from occasional flare-ups and that her disease is not constantly debilitating.” Counsel states that the applicant’s spouse has been employed for 20 years as a private nurse, but that she recently has been unemployed. He does not state, however, that the applicant’s spouse would suffer from financial hardship if she were to be separated from the applicant. The record indicates that the applicant has been unemployed since 2002. The hardship, therefore, that counsel states the applicant’s spouse would endure upon separation from the applicant is emotional and physical/medical hardship, which he states in the aggregate amounts to extreme. In particular, counsel emphasizes that the applicant’s spouse depends on the “care and support of her husband in order to maintain her well-being.” The record makes clear that the applicant’s spouse suffers from sickle cell disease and avascular necrosis of the left hip. A letter from Dr. [REDACTED] MD dated August 16, 2011, states

that the applicant's spouse's chronic medical conditions make it necessary for her to have help. Dr. [REDACTED] does not say that the applicant's spouse's condition is life threatening or give any specific information regarding the help that the applicant's spouse requires and how frequently she requires it. A psychological report and follow-up letter from Dr. [REDACTED] Ph.D., states that the applicant's spouse also suffers from Depressive Disorder and Dependent Personality Disorder. Dr. [REDACTED] states that the applicant's spouse's medical condition is life threatening. He also states that the applicant's spouse has suffered from psychological complications of her disease, namely that the applicant's spouse experiences depression, physical aching, and exhaustion. Dr. [REDACTED] states that the applicant plays a role in keeping his spouse going and that the applicant "appears to be 'the only one' on whom" the applicant's spouse can depend. He states that the applicant's spouse has an "intense dependency" on the applicant. He also notes that the applicant's spouse was married three times previously and has two adult daughters from one of her earlier marriages. The AAO respects the opinions of the medical professionals regarding their respective specialties. What is missing here, however, are details and evidence regarding the role that the applicant plays in caring for his spouse. No details were provided from any source as to the type of care and support that the applicant provides his spouse as a result of her condition.

The applicant's spouse states that she would be heartbroken if she were separated from her husband, to whom she has been married since 2002. She also states that she needs her husband by her side as her comfort and solace in time of need. Again, no details are offered regarding the type of support provided by the applicant. A letter from a Senior Pastor at the couple's place of worship fails to mention any specific role that the applicant plays in caring for his spouse. There are no letters in the record from the applicant and his spouse's adult daughters from their prior relationships documenting the applicant's role. Moreover, there is no explanation given for why the applicant's spouse's adult daughters are unable to provide the applicant's spouse care in times of crises associated with her chronic illnesses. The AAO also notes that the record indicates that the applicant's spouse's mother lives near applicant and his spouse. There is no documentation in the record concerning her condition. Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence 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)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO recognizes that the applicant's spouse is undergoing physical and emotional hardship as a result of her medical condition, there is however no evidence in the record to document the specific role that the applicant plays in caring for his spouse as a result of her condition. Although the AAO notes the applicant's spouse's difficult situation and recognizes that the applicant's spouse

will endure hardship as a result of long-term separation from the applicant, the record does not establish that the hardships she would face, considered in the aggregate, rise to the level of "extreme."

Counsel for the applicant also states that the applicant's spouse would suffer extreme hardship if she were to relocate to her native Jamaica to reside with the applicant. In particular, counsel cites the applicant's spouse's medical condition, the country conditions in Jamaica, the applicant's spouse's long-term residence in the United States and her family ties to the United States. The AAO notes that the record indicates that the applicant's spouse became a U.S. citizen on September 28, 1993 and has had long-term employment in the United States as a nurse's aide. The record also establishes that the applicant's spouse has relied on the health care that she receives from local clinics in Florida to treat her chronic conditions, sickle cell disease and avascular necrosis. Although there is very little documentation in the record concerning the applicant's spouse's family ties, numerous copies of photographs in the record establish that the applicant's spouse has had a relationship with her adult daughters who she states reside in Florida. The applicant's spouse also states that she cares for her elderly mother who resides in Florida. There is, however, no documentation to support this statement in the record. The AAO nonetheless acknowledges that relocation to Jamaica to reside with the applicant would cause extreme hardship to the applicant's spouse, primarily as a result of her chronic medical conditions for which she has received ongoing care in the United States and her longtime residence and employment in the United States. The record also establishes that the applicant's spouse has been the breadwinner for her family. The applicant's spouse has also submitted evidence of her property ownership in the United States. This evidence, considered in the aggregate, establishes that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. 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, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

Although the applicant's spouse's concern 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. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, 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, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases.

Considered in the aggregate, the hardship to the applicant’s spouse does not rise to the level of extreme beyond the common results of removal. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez*, 96 F.3d at 392 (defining “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation); *Matter of Pilch*, 21 I&N Dec. at 631. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under sections 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.