

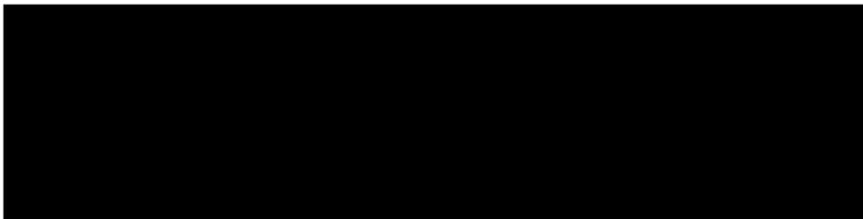
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DATE: **DEC 20 2012** Office: PORT-AU-PRINCE File:

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:



**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 in accordance with the instructions on 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.

for  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Port-au-Prince, Haiti, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti 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 seeking to procure admission to the United States by fraud or misrepresentation. She is the spouse of a naturalized U. S. citizen, and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant does not contest this finding of inadmissibility, and is seeking a waiver of inadmissibility in order to immigrate to the United States.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the District Director, November 10, 2011.*

On appeal, counsel for the applicant provides a legal brief contending that the denial was erroneous as a matter of law and fact in finding no extreme hardship, and submits new hardship evidence including, but not limited to: federal register notices; country condition information; human rights report excerpts; and non-precedent decisions of the AAO. The record also includes documentation regarding the applicant's applications for asylum and adjustment of status and an order granting voluntary departure. It also contains documents submitted with the waiver request, including tax returns; a hardship statement with a summary of expenses; a job letter; and marriage, divorce, and naturalization certificates. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides:

- (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)(1) of the Act provides:

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 [...].

The record reflects that, on July 23, 2002, the applicant attempted to enter the United States using another person's passport and green card to which the applicant's photograph had been affixed. She applied for asylum, but the Immigration Judge's July 12, 2005 order granted her voluntary departure until August 11, 2005 after she withdrew her applications for asylum and withholding of removal. The applicant appears to have departed the United States on or about August 6, 2005 and to have been living in Haiti since that time.

A waiver of inadmissibility under section 212(i) 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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 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. INS.*, 138 F.3d 1292, 1293 (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.

Regarding hardship from relocation, counsel for the applicant contends that moving to a Haiti still recovering from a January 2010 earthquake would impose extreme hardship on the applicant's husband. Official U.S. government reporting regarding safety and security issues substantiates this claim. In 2010 and 2011, the Secretary of Homeland Security addressed the emergency situation by designating Haiti for Temporary Protected Status (TPS). See *Designation of Haiti for Temporary Protected Status*, 75 Fed. Reg. 3476-3478 (January 14, 2010), and *Extension and Redesignation of Haiti for TPS*, 76 Fed. Reg. 29000-29004 (May 19, 2011); see also *Haiti—Country Specific Information*, U.S. Department of State (DOS), August 29, 2011 (“The January 12, 2010 earthquake significantly damaged key infrastructure and greatly reduced the capacity of Haiti’s medical facilities. Despite the passage of time, Haiti’s infrastructure remains in very poor condition, unable to support normal activity, much less crisis situations. Last year’s cholera outbreak – exacerbated by inadequate public sanitation – killed thousands of Haitians, further straining the capacity of medical facilities and personnel and undermining their ability to attend to emergencies.”) and *Haiti—Travel Warning*, DOS, June 18, 2012 (“U.S. citizens have been victims of violent crime, including murder and kidnapping, predominately in the Port-au-Prince area. No one is safe from kidnapping, regardless of occupation, nationality, race, gender, or age.”).

Based on the designation of TPS for Haiti and the disastrous conditions created by the 2010 earthquake, compounded by the subsequent cholera outbreak and the already unstable environment, the AAO finds that moving there would go beyond mere inconvenience and the usual or typical results of removal or inadmissibility. The AAO thus concludes that, were the applicant unable to reside in the United States due to her inadmissibility, the record shows that a qualifying relative would suffer extreme hardship by relocating abroad.

Regarding separation, the applicant's husband contends the applicant's absence has caused him emotional, physical, and financial hardship. The record, however, contains little documentation supporting these claims. The qualifying relative asserts in support of the original waiver request that he has a strong bond of affection for his wife of three years, but offers no evidence how he has been adversely affected by her absence. The record lacks documentation that either spouse has any special condition requiring treatment or relies on the other for physical care or emotional support. There is no evidence that the applicant ever provided any particular assistance to her husband, or formed any relationship with her husband's children. Despite counsel's reference to TPS and information regarding emergency conditions in Haiti, the record contains no specific evidence of

how the applicant was impacted by the earthquake or how she has fared in its aftermath. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Despite the qualifying relative's hardship letter itemizing his monthly expenses and claiming that his wife's absence caused financial difficulty, the record contains no bills substantiating the rental, insurance, utility, transportation, and child support expenses listed. Tax return transcripts for 2002 to 2004 show her husband's income increasing from \$28,000 to nearly \$32,000. The AAO notes that he had sufficient funds to visit Haiti in 2009 to marry the applicant. There is no indication the applicant ever contributed to household income, and no documentation of the applicant's income and living expenses in Haiti or that her presence there represents an economic burden. The applicant indicates without giving details that she and her children are living with relatives in Haiti, where she works as a retailer and has a bank account. She states that, if allowed to immigrate to the United States, she will leave her children in Haiti.

The documentation, when considered in its totality, reflects that the applicant has not established her husband is suffering or will continue to suffer extreme hardship if she is unable to come to the United States as a permanent resident. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. The situation of the applicant's husband, if he remains in the United States, is typical of individuals separated as a result of inadmissibility and does not rise to the level of extreme hardship based on the record. Based on the evidence provided, the applicant has not met her burden of establishing a qualifying relative would suffer hardship beyond the common results of removal or inadmissibility if she is unable to immigrate.

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.

In proceedings 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.