

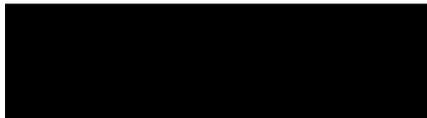
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office  
20 Massachusetts Ave., N.W. MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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DATE: FEB 13 2012

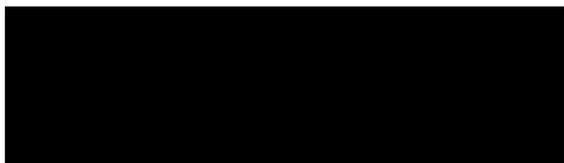
OFFICE: NEW YORK, NY

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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, New York, New York and the matter 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) for having sought admission to the United States through fraud or willful misrepresentation. She is the spouse of a U.S. citizen. The applicant seeks a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated November 16, 2009.

On appeal, counsel asserts that the applicant has clearly demonstrated that her spouse would experience extreme hardship and that the District Director erred in denying the waiver application. *Form I-290B, Notice of Appeal or Motion*, dated December 16, 2009.

The record of proceeding includes, but is not limited to, the following evidence: counsel's brief; statements from the applicant and her spouse; medical statements and records relating to the applicant's spouse; a psychological evaluation of the applicant's spouse; earning statements, W-2 Wage and Tax Statements and tax returns for the applicant and her spouse; an employment statement for the applicant; a certificate of recognition awarded to the applicant; and statements of support from a family member and friends. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (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 chapter is inadmissible.

The record reflects that on August 19, 1995, the applicant attempted to enter the United States using a photo-substituted passport and visa. It also indicates that the applicant failed to acknowledge her misrepresentation on the Form I-485, Application to Register Permanent Resident or Adjust Status, she filed on June 5, 2006 or at the time of her September 12, 2006 adjustment interview. The AAO further notes that the applicant failed to provide this information at the time she was interviewed in connection with the V-1 nonimmigrant visa on which she entered the United States on August 24, 2001. Accordingly, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding.

Section 212(i) of the Act provides 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 or, in the case of a VAWA self-petitioner, 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse 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 United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez*, 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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 BIA 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, the AAO considers the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

We now turn to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

The record contains a December 11, 2009 declaration from the applicant’s spouse in which he states that he immigrated to the United States in 1995 and that moving back to Jamaica is not an option for him because he has stable employment in the United States with benefits and that such employment would not be available to him in Jamaica. The applicant’s spouse also asserts that his children would not have the same educational and career opportunities if they lived in the West Indies. No other hardship claims are made with regard to the applicant’s spouse’s relocation to Jamaica.

Although the AAO acknowledges the applicant’s spouse’s statements regarding his inability to obtain comparable employment in Jamaica and the limited educational and career opportunities available to his children, we do not find the record to contain the documentary evidence to support them. The record contains no country conditions information regarding the Jamaican economy or

workforce that establishes the applicant's spouse would be unable to obtain employment in Jamaica that would allow him to support his family. Neither does it document that a return to Jamaica would limit his children's educational or career opportunities. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. 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 AAO notes that, as previously indicated, the applicant's children are not qualifying relatives for the purposes of this proceeding and the record also fails to demonstrate how any hardships they might experience as a result of a return to Jamaica would affect their father. Therefore, based on the record before us, the AAO finds insufficient evidence to establish that a return to Jamaica would result in extreme hardship for the applicant's spouse.

In support of the applicant's claim that her spouse would suffer extreme hardship as a result of their separation, counsel contends that the applicant's spouse has significant cognitive and functional limitations, and that these limitations make him extremely dependent on the applicant, who is needed to manage their finances, pay bills and handle the family's business transactions. Counsel also states that the applicant's spouse is dependent on the applicant for emotional support and that he became physically ill when he first realized they might be separated. Counsel asserts that the applicant plays a pivotal role in supporting her spouse with his daily activities.

In his December 11, 2009 declaration, the applicant's spouse states that the applicant has been the most important person in his life for more than 20 years and that he cannot imagine being separated from her. He also contends that his children need the applicant to nurture and guide them as he cannot do it by himself. In an earlier affidavit, dated March 1, 2007, the applicant's spouse states that he suffers from hypertension, a hiatal hernia and other medical problems, and that he would not be able to meet his family's financial obligations without the applicant's income.

In support of these claims, the record contains a March 5, 2009 psychological evaluation prepared by psychologist [REDACTED]. Based on her interviews with the applicant's spouse and the applicant, [REDACTED] finds the applicant's spouse to suffer from Somatization Disorder and to be a Dependent Personality. She further reports that the applicant's spouse has both cognitive and functional limitations, including functional illiteracy, which have resulted in considerable dependency on the applicant. [REDACTED] notes that she found the applicant's spouse's verbal comprehension to be "notably limited" during their interview and that this inability to readily understand what is being said to or asked of him often results in feelings of insecurity and mistrust. She states that the applicant's spouse depends on the applicant to "explain to him what is occurring in his immediate surroundings." [REDACTED] further indicates that the applicant's spouse's limitations make him dependent on the applicant to manage their finances, pay bills and carry out business transactions, and to take care of their children's needs, including completing any documentation required by their schools or doctors. She notes that the applicant's spouse's cognitive and functional deficits limit his employment options and that his aspiration to obtain employment at above the minimum wage is not realistic. [REDACTED] reports that when the applicant's spouse first realized he might be separated from the applicant, he became physically ill.

Additional evidence regarding the applicant's spouse is found in a 2006 letter from the applicant's spouse's employer, Alex Mayer, who states that the applicant's spouse's work schedule has been reduced because of his health problems, which include a hiatal hernia. Medical statements and other documentation from 2006 and 2007 establish that the applicant's spouse was then being treated for hypertension, hyperlipidemia and erosive gastritis. The February 21, 2007 medical statement indicates that excessive stress could worsen the applicant's spouse's conditions.

To establish the applicant's spouse's financial status, the applicant has submitted copies of his recent tax returns and W-2 Wage and Tax Statements, which show that he earned \$15,448 in 2008, down from the \$18,616 he earned in 2007 and the \$19,448 in 2006.

Based on the preceding evidence, the AAO concludes that in the applicant's absence, her spouse would experience extreme hardship. In reaching this conclusion, we have noted the applicant's spouse's limitations and the impact they would have on his ability to meet his daily responsibilities, including those of a single parent. We also observe that his income at the time of the applicant's appeal was considerably lower than the 2008 federal poverty guideline of \$17,600 for a family of three. Although the submitted medical documentation does not demonstrate the current state of the applicant's spouse's health, we find that when the specific hardship factors established by the record and the hardships routinely created by separation are considered in the aggregate, the applicant has established that her spouse would suffer extreme hardship if the waiver application is denied and he remains in the United States.

The AAO, however, 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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated that her spouse would experience extreme hardship as a result of relocation, we cannot find that refusal of admission would result in extreme hardship for him.

The applicant has not demonstrated that her inadmissibility to the United States would result in extreme hardship to a qualifying relative and, therefore, has not established eligibility for a waiver pursuant to section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served by considering whether she merits a waiver as a matter of discretion.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval 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.