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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

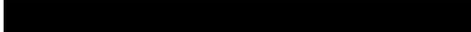


H5

Date: FEB 15 2012

Office: KINGSTON, JAMAICA

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.

Thank you,

A handwritten signature in cursive script that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Kingston, Jamaica. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Jamaica who entered the United States in November 2000 using a photo substituted Jamaican passport. He has been found 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 procuring admission 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 U.S. 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 reside in the United States.

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 September 8, 2009.

On appeal, the applicant provided an addendum to the appeal form in support of the his waiver application. In the addendum, the applicant asserted that the qualifying relative will experience psychological hardships as a consequence of the applicant’s continued inadmissibility. Further, the applicant contends that the qualifying spouse would experience a lower quality of life, a lack of healthcare and affordable housing, and financial and psychological hardships if she were to relocate to Jamaica. The applicant also indicates that the qualifying spouse has safety concerns if she were to relocate to Jamaica.

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) with addendum; a letter from the applicant; articles regarding postpartum depression; country conditions materials; a marriage certificate; birth certificates for the applicant, qualifying spouse and their daughter; a religious document regarding their daughter; a copy of a page of the qualifying spouse’s passport; an affidavit from the qualifying spouse; psychological and medical records regarding the qualifying spouse; photographs and financial documentation. 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, in pertinent part:

- (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 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.

In the present case, the record reflects that the applicant entered the United States in November 2000 using a photo substituted Jamaican passport. The applicant has not contested his inadmissibility. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for procuring entry to the United States through fraud or misrepresentation.¹

The AAO finds that the applicant has established that his qualifying spouse is suffering extreme hardship as a consequence of being separated from him. Concerning her emotional and psychological hardships, the record contains psychological evaluations of the qualifying spouse, an affidavit from the qualifying spouse and some of her medical records. The psychological evaluations reveal that the qualifying spouse has been diagnosed with post-partum depression, major depression and anxiety disorders. The evaluations, the qualifying spouse’s affidavit and her medical records confirm that the applicant’s spouse also dealt with fertility issues, which caused her depression, stress and other psychological problems. In her affidavit, the qualifying spouse also indicates that she is struggling as a single mother and that she needs the applicant’s emotional support. She states that she fears what will happen to her daughter if she dies or suffers a permanent condition due to her psychological state. Further, the psychological evaluations and the qualifying spouse’s affidavit explain that the qualifying spouse is currently living with her parents,

¹ The Field Office Director also found the applicant to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States from June 7, 2001 until August 2007, a period in excess of one year. Further, as the applicant received a removal order on June 7, 2001, following his asylum proceeding, he is also inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act for having been previously ordered removed, and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

who have a history of addiction problems, and that they also require support and care for their own medical and other issues. With regard to the qualifying spouse's financial hardships, the qualifying spouse indicates that she had to move in with her parents and cannot visit the applicant as often as she needs due to her financial hardship. The record contains the qualifying spouse's affidavit, proof of her educational debt, banking statements and credit card expenses. However, the record does not contain any tax returns or other documentation indicating the qualifying spouse's current income or the prior income, if applicable, of the applicant. As such, there is insufficient evidence to support the assertions made by the qualifying spouse regarding a financial hardship. Nonetheless, in light of the qualifying spouse's emotional and psychological hardships, the record reflects that the hardship facing the qualifying spouse in the United States without the presence of the applicant rises to the level of extreme.

The AAO further concludes that the applicant has demonstrated that his spouse would suffer extreme hardship in the event that she relocates to Jamaica. The qualifying spouse was born in the United States and has lived here for her entire life. Further, the qualifying spouse has no family or friends in Jamaica, and her immediate family and her U.S. citizen daughter live in the United States. Additionally, because the qualifying spouse's parents are in poor health due to obesity, mobility issues and past drug addictions, she has become their caregiver as well as being a single mother to her daughter. The qualifying spouse also indicates that she has safety concerns regarding relocation to Jamaica and fears that she will be unable to find employment. The record contains country-conditions materials supporting her assertions. When considered in the aggregate, the hardships that would result if the applicant's wife relocated to Jamaica, including length of residence in the United States, separation from her family members, and potential safety and economic issues in Jamaica, rise to the level of extreme hardship.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Morales*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a

history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives). . . .

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardships the applicant's United States citizen spouse and child would face if the applicant is not granted this waiver, regardless of whether they accompanied the applicant or remained in the United States, his support from the qualifying spouse and the apparent lack of a criminal record. The unfavorable factor in this matter is the applicant's admission into the United States through fraud or misrepresentation and his failure to depart the United States after receiving a removal order.

Although the applicant's violations of the immigration laws are serious and cannot be condoned, the positive factors in this case outweigh the negative factors. The AAO therefore finds that a favorable exercise of discretion is warranted. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

However, the AAO notes that, on June 7, 2001, the applicant received an order of removal and has subsequently departed the United States. As such, it is necessary that the applicant file an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212).

ORDER: The appeal is sustained.