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



U.S. Citizenship
and Immigration
Services



H5

DATE: **FEB 24 2012** OFFICE: KINGSTON, JAMAICA

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 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 Field Office Director, Kingston, Jamaica, 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), for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. The applicant through counsel does not contest this finding of inadmissibility. Rather, she 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 with her husband and child.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of Field Office Director*, dated July 14, 2009.

On appeal, counsel asserts that the United States Citizenship and Immigration Services (USCIS) erred in denying the applicant's waiver application because the applicant's spouse would suffer extreme hardship because of the spouse's medical conditions; strong family ties in the United States; country conditions in Jamaica; and the applicant's rehabilitation for a single violation of U.S. immigration laws. *See I-290B Brief in Support of Appeal*, dated August 12, 2009.

The record includes, but is not limited to: a brief from counsel; letters of support; biographic, employment, medical, and financial documents; and country conditions information. 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.

The Field Office Director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for having presented a photo-substituted Jamaican passport and nonimmigrant U.S. visa when seeking admission to the United States on January 21, 2000. The record supports the finding, and the AAO concurs that the misrepresentation was material. The applicant through counsel has not disputed her inadmissibility on appeal. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides in pertinent part:

- (1) The Attorney General [Secretary of Homeland Security] may, in the discretion of the [Secretary of Homeland Security], 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 of Homeland Security] 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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 record contains references to hardship the applicant and her child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien or her child as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant and her child will not be separately considered, except as it may affect the applicant’s spouse.

Counsel contends that the applicant’s spouse has suffered extreme financial hardship upon separation from the applicant because the spouse, as the sole breadwinner, has been supporting two households and paying for travel to Jamaica to see the applicant and their child. Counsel submitted copies of remittances in support of the spouse’s financial hardship. Also, the applicant’s spouse asserts that he has experienced extreme emotional hardship and cannot cope and carry-on with daily activities because he is stressed and depressed from worrying about the criminal violence that his family may be subjected to in Jamaica.

The AAO notes that the applicant’s spouse may experience some financial and emotional hardship because of separation from the applicant. However, the record does not establish that the hardship that the spouse may experience goes beyond what is normally experienced by qualified family members of inadmissible individuals. The record does not include any evidence that the spouse has been unable to support himself or to meet his financial obligations in the applicant’s absence. Moreover, the record indicates that the spouse has financial support from his family members in the United States to assist him with his financial obligations and the maintenance of his two

households: “ ... [The spouse] is able to make various repairs on home [sic] owned by our sisters and brother which allows them to send the money saved to his family. Without these sources of income coming from the United States, [the applicant] and son would not have a roof over their heads ...” *Letter of Support from* [REDACTED] Additionally, there is no evidence in the record evidencing the spouse’s current mental health or his inability to function without the applicant’s presence. Also, the AAO notes the spouse’s subjective fears for the applicant and their child in Jamaica concerning the criminal violence there. However, the country conditions information does not support how the spouse or his family would be directly impacted by the social conditions in Jamaica. Accordingly, the AAO cannot conclude, upon considering the hardship factors in the aggregate, that the applicant’s spouse would suffer extreme hardship if he were to remain in the United States without the applicant due to her inadmissibility.

Additionally, counsel asserts that the applicant’s spouse would endure extreme hardship if he were to relocate to Jamaica because he would not receive the proper medical care for his conditions; he has strong ties to the United States as evidenced by his family ties and long-term employment history; his employment prospects would be grim, and even if he could find employment, his medical care costs would be too high to provide financially for his family; and there is high crime and violence.

The record is sufficient to establish that the applicant’s spouse would suffer hardship if he were to relocate to Jamaica because of his ongoing, serious medical concerns of diabetes mellitus; hypertension; irregular heart beat; and prostate swelling. The AAO notes that in the Travel Warning for Jamaica, the U.S. Department of State indicates medical care is more limited than in the United States. The Travel Warning further indicates that serious medical conditions can cost thousands of dollars, and doctors and hospitals often require cash payment for services. The applicant’s spouse is the sole breadwinner, and thereby, has limited financial resources to cover his ongoing, necessary, medical care costs in Jamaica. Also, he has strong family ties in the United States as evidenced by his immediate relatives and extended family members who also are in the United States as citizens and lawful permanent residents. And, the spouse maintains a relationship with those family members. Further, although the country conditions information fails to show how the spouse would be directly impacted by the criminal violence in Jamaica, the record reflects that the cumulative effect of the medical hardship, the lack of financial resources, the separation from his family in the United States, and the social conditions in Jamaica that the applicant’s spouse would experience upon relocating there, rises to the level of extreme. The AAO thus concludes that the applicant’s spouse would suffer extreme hardship if he were to relocate to Jamaica due to the applicants’ inadmissibility.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if he relocated to be with the applicant, the AAO 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. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios; as 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 extreme hardship from separation, the AAO cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises 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 United States Citizen spouse as required under section 212(i) 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(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.