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



H5

DATE: **JAN 03 2012** OFFICE: PORTLAND, MAINE

FILE: [REDACTED]

IN RE: APPLICANT: [REDACTED]

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:

[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 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,

Elean C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Portland, Maine, and 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 has resided in the United States since August 21, 1993, when he used multiple false identification documents bearing the name [REDACTED] in an attempt to gain admission into the United States. He was 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 having attempted to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. Citizen spouse and lawful permanent resident mother.

The Field Office Director concluded the applicant failed to provide evidence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated August 25, 2009.

On appeal, counsel for the applicant submits a brief in support of appeal, an updated affidavit from the applicant's spouse, affidavits from the applicant and his mother, a U.S. Department of State Human Rights Report on Haiti, a letter from a physician, medical records, and U.S. Federal income tax returns. In the brief, counsel asserts the applicant has provided sufficient evidence of extreme hardship to his spouse, in that the applicant and his spouse are undergoing medical procedures, mainly fertility treatments, conditions in Haiti are not good, and that the applicant merits a favorable exercise of discretion. *Brief in support of appeal*, September 14, 2009.

The record includes, but is not limited to, the documents listed above, evidence of birth, marriage, divorce, permanent residence, and naturalization, additional U.S. Federal income tax returns, letters from employers and financial institutions, paystubs, other applications and petitions filed on the applicant's behalf, evidence of exclusion proceedings and the applicant's entry, and criminal records. 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:

- (1) 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.

In the present case, the record reflects that on August 21, 1993, the applicant, who swore under oath that his name was [REDACTED] attempted to procure admission into the United States using identity documents which did not belong to him, including a social security card, a temporary resident card, a Haitian passport, and a Florida driver's license in the name of [REDACTED]. *Sworn statement*, August 21, 1993. The applicant admitted he paid a person in Haiti \$2000.00 for those documents. *Id.* The applicant was placed in exclusion proceedings, failed to appear at those proceedings and was ordered excluded and deported from the United States on September 17, 1993. *Order of Immigration Judge*, September 17, 1993. The applicant remained in the United States. At a subsequent immigration interview, the applicant, using the name [REDACTED] claimed he entered the United States without inspection and was never in immigration proceedings. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States as well as attempting to procure a benefit under the Act through fraud or misrepresentation. The applicant's qualifying relatives for a waiver of this inadmissibility are his U.S. Citizen spouse and lawful permanent resident mother.

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.

Counsel for the applicant claims the applicant and his spouse are undergoing extensive fertility treatments in the United States, treatment which is unavailable in Haiti. *Brief in support of appeal*, September 14, 2009. The applicant and his spouse corroborate this in their affidavits. *See affidavits of applicant and his spouse*, September 17, 2009. A letter from [REDACTED] confirms the spouse is her patient, she is scheduled for surgery as well as follow-up visits, and the applicant will need to be present to provide support and transportation for these visits. *Letter from [REDACTED]* September 16, 2009. Some medical records are submitted in support. *See medical records*. Moreover, the applicant’s spouse claims she would worry about the applicant’s safety if he returned to Haiti given the country conditions, and that she would be unable to relocate to Haiti given those concerns as well as her medical necessities. *Affidavit of applicant’s spouse*,

September 17, 2009. A U.S. Department of State Human Rights Report on Haiti is submitted in support. *2008 Human Rights Report: Haiti, U.S. Department of State, February 25, 2009.*

The applicant's mother states she is 81 years old, and in poor health. *Letter from applicant's mother, September 17, 2009.* She additionally claims the applicant takes her to her medical appointments as well as to church, and because of time constraints was unable to provide her medical records for the I-601 waiver application. *Id.*

The applicant's spouse contends the household's financial situation would collapse if the applicant returned to Haiti. *Affidavit of applicant's spouse, September 17, 2009.* U.S. Federal income tax returns were submitted, which show in 2008 the household's adjusted gross income was \$35,710. *See 2008 U.S. Federal Income Tax Returns.* Despite submission of evidence on the spouse's income, including employment verification letters, the record does not contain sufficient evidence of household expenses to support assertions of financial hardship. The applicant further fails to provide any evidence regarding his own employment and earnings. Without details of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

The applicant's spouse's claim that she is undergoing fertility treatments is supported by the record. *Letter from [REDACTED] September 16, 2009.* Moreover, the spouse's treating physician has indicated some assistance from the spouse is necessary, although such assistance may be limited in nature and duration. *Id.* Furthermore, the applicant's mother has indicated she is 81 years of age, and requires the applicant's assistance with transportation to her medical appointments and church. *Letter from applicant's mother, September 17, 2009.* Although there is no supporting evidence on what the mother's medical condition is, the AAO finds the applicant's spouse and mother would experience some hardship due to their medical issues upon separation from the applicant.

The applicant's spouse contends she would worry about the applicant if he returned to Haiti, given the country conditions. *Affidavit from applicant's spouse, September 17, 2009.*

The Department of Homeland Security (DHS) Secretary, Janet Napolitano, has determined that an 18-month re-designation of Temporary Protected Status (TPS) for Haiti is warranted because of the devastating earthquake and aftershocks which occurred on January 12, 2010. As a result, Haitians in the United States remain unable to return safely to their country. Even prior to the 2010 catastrophe, Haiti was subject to years of political and social turmoil and natural disasters. In a travel warning issued on August 8, 2011 the U.S. Department of State noted despite the passage of time, the extensive damage to the country after the 2010 earthquake and aftershocks, the woefully inadequate infrastructure, and the chronic danger of violent crime, continue to significantly impact Haitians and visitors, including U.S. Citizens. *U.S. Department of State, Travel Warning – Haiti, August 8, 2011.* Based on the re-designation of TPS for Haitians and the disastrous conditions which continue to exacerbate an already unstable environment, and which will affect the country and people of Haiti for years to come, the AAO finds that requiring spouse and mother to join the applicant in Haiti would result in extreme hardship.

For the same reasons, the AAO finds that spouse and 81 year old mother would also experience extreme hardship were they to remain in the United States without the applicant. This finding is based on the extreme emotional harm the spouse and mother will experience due to concern about the applicant's well-being and safety in Haiti, a concern that is beyond the common results of removal or inadmissibility, as well as the qualifying relative's medical issues.

Considered in the aggregate, the applicant has established that the U.S. Citizen spouse and lawful permanent resident mother would face extreme hardship if the applicant's waiver request is denied.

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.

The unfavorable factors in this instance include the applicant's numerous immigration violations, and the length of time spent in the United States without status. The favorable factors include the extreme hardship to the qualifying relatives, and some evidence of hardship to the applicant if he relocates to Haiti.

The applicant's immigration violations, comprised of his 1993 attempt to enter the United States with false documents and statement under oath that his true name was [REDACTED] his subsequent failure to appear at immigration proceedings, his multiple misrepresentations at an 2008 immigration interview, including denying he had ever been in immigration proceedings, stating he entered without inspection in 1999, and failing to disclose his earlier false identities, convey a 15 year history of flouting immigration laws. Furthermore, although the applicant submitted a statement describing the hardship his spouse and mother would experience given his inadmissibility, the applicant fails to express any remorse for these immigration violations. In contrast, there is insufficient evidence the applicant has a history of stable employment, has contributed to his community, has strong property or business ties, or, in light of his long history of misrepresentation, is a person of good moral character. The AAO therefore finds in this case, the negative factors outweigh the positive factors, and the applicant does not merit a favorable exercise of discretion.

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 not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.