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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



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Date: **JAN 27 2012** Office: MOUNT LAUREL, NJ

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mount Laurel, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that 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 attempting to procure admission to the United States through fraud or the willful misrepresentation of a material fact. The applicant is married to a United States citizen and the father of two United States children. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 with his spouse and children.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated April 29, 2009.

On appeal, the applicant, through counsel, claims that sufficient evidence has been submitted "to support the [applicant's] hardship claim" *Form I-290B*, filed June 1, 2009.

The record includes, but is not limited to, counsel's appeal brief; statements from the applicant's wife; letters of support for the applicant and his wife; a psychological evaluation on the applicant's wife; medical documents for the applicant's wife; tax documents, household bills, and utility bills; birth certificates for the applicant's children; documents from the applicant's removal proceeding; and country conditions documents on Haiti. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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 Act is inadmissible.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 indicates that on May 29, 1995, the applicant attempted to enter the United States by presenting a fraudulent Haitian passport. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

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 or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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 Service (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 of Immigration Appeals (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 counsel’s appeal brief filed June 29, 2009, counsel states that if the applicant is removed to Haiti, his wife and children will join him in Haiti but they will suffer hardship. Counsel states the applicant’s wife “suffers with several medical and psychological problems.” He states that the applicant’s wife “had a very difficult pregnancy with her eldest child and medical care in Haiti is terrible. She probably would not have survived her pregnancy had she had to return there.” Counsel claims that the applicant’s wife suffers from chest pains “which to date go undiagnosed.” In a statement dated February 16, 2009, the applicant’s wife states “[t]he stress that [she] feel[s] about [the applicant’s] possible deportation is overwhelming [her].” In a psychological evaluation dated April 18, 2008, Dr. [REDACTED] states the applicant’s wife has “the clear signs and symptoms of an adjustment disorder with an anxious mood.” Dr. [REDACTED] states the applicant’s wife’s symptoms include “sadness, hopelessness, lack of enjoyment, crying spells, nervousness, worry, desperation, trouble sleeping, difficulty concentrating, and feeling overwhelmed.” Dr. [REDACTED] also states that the applicant’s wife’s “physical and mental health is certainly at risk to deteriorate if [the applicant] is not allowed to stay in the United States.” Additionally, in a statement dated February 16, 2009, the applicant’s wife states she “injured [her] left hand at work while [she] was turning over a patient.” The AAO notes that documentation in the record establishes that the applicant’s wife suffers from an injury to her right rib. The AAO notes the medical and mental health concerns of the applicant’s wife.

Counsel states that the conditions in Haiti “are deplorable” and that “is probably an understatement.” The applicant’s wife states she is “scared to live [in Haiti] and scared for [her] little girls to be there.” In

a statement dated February 17, 2009, applicant's previous counsel states the applicant's wife and daughters "would face enumerable dangers [in Haiti] as there is shockingly high levels of sexual violence against women and young girls." In an undated statement, the applicant's wife states it is dangerous in Haiti, U.S. citizens "are often targeted for kidnapping," the "health system is substandard," and "there is no health insurance, government help, or public hospitals." Counsel also claims that the "water system is contaminated and not as purified as here in the United States," "there are no street lights," and "no utilities such as electricity." The applicant's wife states that they "would never be able to find the kind of jobs that are available here in the United States." Counsel states the applicant's children "know no other country other than the United States" and they do not speak Creole or French. Counsel states the applicant's children would not get an education in Haiti, because the applicant and his wife "would not be able to make enough in Haiti to send their daughters to private schools." Additionally, the applicant's wife states that in 2006, she took her daughter to Haiti and her daughter "had severe allergic reactions to insect bites." Counsel states the applicant is "instrumental in raising the couple's two daughters" and the applicant's daughter is very close to the applicant. [REDACTED] indicates the applicant's daughter "too would be at risk for mood and behavioral problems if her life were to be seriously disrupted by the [removal] of [the applicant]."

Counsel states the applicant's wife "would be subject to greater financial instability without the addition of [the applicant's] potential income." Counsel states that the applicant has "a skill that is in demand" as a certified electrician, which would allow him to help his wife financially. Counsel states the applicant's wife "sometimes works 100 hours a week just to make ends meet" and she "receives no governmental aid." The applicant's wife states the money she earns is not "enough for [them] to pay all the bills." She states her expenses are approximately \$2,309.00 a month, and she "can barely afford groceries to put in [her] kitchen" or clothes for the children. Additionally, she states she owes money to people and she cannot afford to pay them back. The AAO notes that the record establishes that the applicant's wife works as a certified nursing assistant, making approximately \$25,032 annually. *See statement from [REDACTED]*, dated June 12, 2008. Counsel states that without the applicant, the applicant's wife "would not be able to keep the house which they are renting since she could not afford the rent on her earnings." The applicant's wife states if the applicant returns to Haiti, she "would become even more depressed and [she] won't be able to support [their] children. [She] may lose [her] job." The applicant's wife states the applicant takes care of the children while she works. She claims that she has "no family to rely on" and she cannot "afford to pay for childcare." Additionally, the applicant's wife states the applicant "has been sick for the past 2 years." She claims that that she took the applicant to hospital and they cannot afford the hospital bills or medication. The AAO notes the financial concerns of the applicant's wife.

The Department of Homeland Security (DHS) Secretary, [REDACTED] has determined that an 18-month 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 are unable to return safely to their country. Even prior to the current 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 the extensive damage to the country after the January 12, 2010 earthquake and the chronic danger of violent crime, in particular kidnapping. *U.S. Department of State,*

Travel Warning – Haiti, August 8, 2011. Additionally, the travel warning reports on the cholera outbreak, “lack of adequate infrastructure – particularly in medical facilities,” and “limited police protection. Based on the designation of TPS for Haitians and the disastrous conditions which have compounded an already unstable environment, and which will affect the country and people of Haiti for years to come, the AAO finds that the relocation of the applicant’s wife to Haiti would result in extreme hardship.

For the same reasons, the AAO finds that the applicant’s wife would also experience extreme hardship were she to remain in the United States without the applicant. This finding is based on the extreme emotional harm the applicant’s wife 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. Additionally, the AAO finds that the applicant’s wife would suffer extreme financial hardship if she remains in the United States. Accordingly, the AAO finds that the applicant has established that his United States citizen wife would suffer extreme hardship if his waiver of inadmissibility application were denied.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, “[B]alance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant’s misrepresentation, unlawful presence in the United States, and failure to comply with a removal order. The favorable and mitigating factors are the applicant’s United States citizen wife and children, the extreme hardship to his wife if he were refused admission, the letters of support, and the absence of a criminal record.

The AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

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. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is approved.¹

¹ The AAO notes that on February 5, 1997, an immigration judge ordered the applicant excluded and deported from the United States. Therefore, even though the AAO has now sustained the applicant's appeal and approved his Form I-601, it appears the applicant also requires an approved Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212).