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



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

Date: **MAR 12 2012**

Office: PHILADELPHIA

FILE: [REDACTED]

IN RE: [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,

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania, 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 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 into the United States by fraud or willful misrepresentation on September 30, 2003. The applicant is married to a U.S. citizen and has a U.S. citizen father and son. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

In a decision dated March 13, 2009, the field office director found that the applicant failed to submit any evidence to show that a qualifying relative would suffer extreme hardship. The waiver application was denied accordingly.

In a brief on appeal, dated April 29, 2009, counsel states that the applicant is submitting new documentation of hardship to his U.S. citizen father and that previously submitted documentation shows that his U.S. citizen spouse would suffer extreme hardship as a result of his inadmissibility.

The record indicates that on September 30, 2003, at the Miami, Florida Port of Entry, the applicant presented a photo-substituted French passport in an attempt to gain entry into the United States rendering him inadmissible under section 212(a)(6)(C)(i) of the Act.

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

- (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. Hardship to the applicant or his child can be

considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse and father are the qualifying relatives in this case.

U.S. Citizenship and Immigration Services records indicate that since filing his waiver application and appeal, the applicant was arrested for simple assault, harassment, and retail theft. Records also show that a Temporary Protection Order has been taken out by the applicant's U.S. citizen spouse, the petitioner in his case, against him to protect herself, her two children, and her sister. Finally, these records reveal that the applicant and his U.S. citizen spouse are no longer residing together.

On November 2, 2011, the AAO issued a Notice of Intent to Dismiss (NOID) in the applicant's case giving him an opportunity to submit evidence in regards to his criminal record and to his relationship with his spouse. The AAO noted that if convicted, the applicant may be inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The AAO notes that retail theft is a crime involving moral turpitude and that spousal abuse has been found to be a crime involving moral turpitude as well as a violent crime, subjecting an applicant to the heightened discretionary standard of 8 C.F.R. § 212.7(d).

In response to the NOID, the applicant submitted a statement from his spouse, a statement from his father, and court documents, filed on December 20, 2011, dismissing the Temporary Protection Order against him. In her statement, the applicant's spouse explains that there was no physical contact involved in her filing for the protection order against the applicant and that she has been recently diagnosed with bipolar disorder, requiring the support of the applicant more than ever. She also states that both she and the applicant were charged with theft and that he "took half the blame," so she would not serve time in jail. She asserts that the theft charge has been expunged from the applicant's record.

Although the applicant's spouse's statements and the court documents appear to resolve that the applicant has not been convicted of a violent crime, they do not provide the documentation necessary to adequately address his arrests. The applicant's spouse's statement implies that he was convicted of retail theft. The AAO also notes that under the current statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

Thus, the applicant has failed to provide the documentation necessary to resolve his criminal matters. Nevertheless, the AAO finds that in accordance with the statutory requirement of extreme hardship for a waiver of inadmissibility, the applicant has met his burden of establishing extreme hardship to a qualifying relative.

A waiver of inadmissibility under both 212(i) and 212(h) 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 wife and father are qualifying relatives under both 212(i) and 212(h). 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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., *In re 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).

The record of hardship includes: two letters from the applicant's father, photographs of the applicant's father's injured knee, a Notice of Exhaustion of Unemployment Benefits for the applicant's spouse, two statements from the applicant's spouse, a letter from the applicant's mother-in-law, a copy of a prescription, and reports and articles on conditions in Haiti.

In his statement, the applicant's father states that if the applicant was removed to Haiti he would suffer emotionally as he was always stressed and worried about his son's safety before his son came to the United States. He also states that his son helped to care for him after he had surgery on his knee and that his son's wife and child would also suffer from the applicant being found inadmissible.

In a statement submitted in response to the applicant's NOID, the applicant's father again asserts that he would suffer extreme emotional hardship as a result of the applicant being removed to Haiti.

In addition to her assertions noted above, in a statement, dated December 1, 2008, the applicant's spouse stated that she and her son would suffer extreme hardship as a result of the applicant's inadmissibility. She stated that they would suffer emotionally and financially without the applicant and that they have no connections to Haiti.

The AAO finds that although the applicant's father's and spouse's claims are not supported by documentation in the record extreme hardship exists in this case because of the current country conditions in Haiti.

The AAO notes that the Department of Homeland Security (DHS) Secretary, Janet Napolitano, determined that an 18-month designation of Temporary Protected Status (TPS) for Haiti was warranted because of the devastating earthquake and aftershocks which occurred on January 12, 2010. On May 19, 2011, Secretary Napolitano announced the re-designation of Haiti for TPS and extended the country's current TPS designation for 18 months, through Jan. 22, 2013. 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 January 20, 2011, the U.S. Department of State notes that the January 12th earthquake caused significant damage to key infrastructure and that access to basic services remains limited. The warning states that Haiti continues to experience shortages of food, drinking water, transportation and adequate shelter. The warning also states that the earthquake significantly reduced the capacity of Port-au-Prince's medical facilities and inadequate public sanitation poses serious health risks.

In addition, the warning states that there remains a persistent danger of violent crime, including armed robbery, homicide, and kidnapping in Haiti. The warning states that most kidnappings are criminal in nature, and the kidnappers make no distinctions of nationality, race, gender, or age, with some kidnap victims having been killed, shot, sexually assaulted, or physically abused. *U.S. Department of State, Travel Warning – Haiti, January 20, 2011.* 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 requiring the applicant's spouse and/or father to join the applicant in Haiti would result in extreme hardship.

Likewise, the AAO finds that the applicant's spouse and/or father would also experience extreme hardship were she or he to remain in the United States without the applicant. This finding is based on the extreme emotional harm the applicant's spouse and/or father 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.

However, the AAO does not find that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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 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 applicant's case includes his criminal record, his misrepresentation to obtain entry into the United States, and his illegal residence in the United States. In addition, the applicant has failed to submit documentation to fully establish his criminal record and how his arrests for simple assault, harassment, and retail theft have been resolved. Without these documents, the AAO is unable to ascertain the nature of adverse factors in the applicant's case. The positive factors in the applicant's case include the extreme hardship his father and spouse would experience as a result of being separated from the applicant. However, given that the burden of proof to establish eligibility is on the applicant, we consider the applicant's failure to submit full documentation of his criminal record an additional adverse factor, and we do not find that the applicant warrants the favorable exercise of the Secretary's 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. *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.