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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

PUBLIC COPY

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[redacted]

DATE: MAY 3 1 2012 Office: KINGSTON, JAMAICA FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) and 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude, and pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa to the United States by fraud or willful misrepresentation of a material fact. The applicant's spouse is a U.S. citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative; the applicant committed an aggravated felony and no waiver is available to him; and the field office director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated March 25, 2010.

On appeal, counsel asserts that the field office director failed to properly consider the evidence presented; erred in finding the applicant to have committed an aggravated felony; and placed undue reliance on an a previously denied Form I-601. *Form I-290B*, received April 27, 2010.

The record includes, but is not limited to, two briefs from counsel, the applicant's spouse's statements and the applicant's statement. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant presented false bank statements and a false employment letter in support of a nonimmigrant visa application in or around June 2001. As such, he is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States by willful misrepresentation of a material fact.

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 that:

> (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.

The record also indicates that the applicant was convicted of uttering forged documents on June 8, 2001 in Jamaica and was placed on probation for 12 months. The AAO will not, however, determine whether the applicant's crime for uttering forged documents is a crime involving moral turpitude, as a finding of extreme hardship and a waiver under section 212(i) of the Act would also satisfy the requirements of section 212(h) of the Act, the provision of law under which a section 212(a)(2)(A)(i)(I) inadmissibility may be waived.[1]

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 can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse. 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,* 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

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[1] The AAO notes that the field office director incorrectly stated that the applicant was inadmissible to the United States as an aggravated felon and that no waiver was available to him. However, only aliens who have been ordered removed from the United States and who have aggravated felony convictions are inadmissible to the United States pursuant to sections 212(a)(9)(A)(i) and (ii) of the Act. Such individuals may apply for an exception to their inadmissibility under section 212(a)(9)(A)(iii) of the Act. In that the record does not establish that the applicant has been previously removed from the United States, he is not subject to the inadmissibility provisions of section 212(a)(9)(A) of the Act.

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, the AAO considers the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel states that the applicant's spouse was born in the United States and has resided in the United States her entire life; she would not be able to live and adapt to life in Jamaica; her two adult children and mother live in the United States; she would not be able to earn a living in Jamaica as jobs are scarce; she has a successful career as an engineer in the United States; she is accustomed to the freedoms protected by the U.S. Constitution; and she would not be able to adjust to a country where there are arbitrary infringements on personal liberty and privacy without warrants, and workplace discrimination against women. The applicant's spouse makes similar claims and also states that the applicant was almost killed when he was robbed while driving his taxi. The applicant states that he and his spouse would be targeted or kidnapped for ransom if his spouse resides in Jamaica and word gets around that she is American. The applicant's spouse states that Jamaica is a third-world country which is economically depressed and has a high crime rate.

The AAO notes that the record does not include supporting documentary evidence to support the claims related to the lack of employment opportunities, discrimination and civil rights in Jamaica. While counsel indicates that he submitted country conditions information on Jamaica, the AAO does

not find these materials in the record. In addition, the record does not include documentary evidence that establishes the applicant's spouse is employed as an engineer. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record reflects that the applicant's spouse has ties to the United States. However, the record does not include sufficient evidence of financial, medical, emotional or other types of hardship, which in their totality, establish that the applicant's spouse would experience extreme hardship if she relocates to Jamaica.

Counsel states that the applicant's spouse's former husband committed infidelity; she lost hope that she would ever find love again; and she was hospitalized for five days due to stress related to the applicant's immigration situation. The applicant's spouse makes similar claims and also states that she talks to the applicant every day. The applicant's spouse further asserts that the distance between her and the applicant is placing a strain on their union; the financial burden of visiting the applicant is a hardship factor; the applicant is everything to her; and this is her second chance at love.

The record reflects that the applicant's spouse may have emotional difficulty if separated from the applicant, but the record provides no documentary evidence of the extent of this difficulty. The record does not include evidence of financial hardship due to separation. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record does not include sufficient evidence of financial, medical, emotional or other types of hardship, which in their totality, establish that the applicant's spouse would experience extreme hardship upon remaining in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Accordingly, he is not eligible for a waiver under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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.