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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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[Redacted]

Date: **MAY 31 2012** Office: NEW YORK, NEW YORK 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 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 Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 procuring admission to the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is the beneficiary of an approved Petition for Amerasian, Widow(er) or Special Immigrant (Form I-360). 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.

The Director found that the applicant had failed to establish that he would suffer extreme hardship and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated December 11, 2009.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Services (USCIS) abused its discretion by denying his waiver despite evidence of extreme hardship. *Form I-290B*, filed January 7, 2010.

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant, letters of support, a psychological evaluation for the applicant, financial documents, and employment documents. 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.

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

- (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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

In the present case, the record indicates that on July 28, 1996, the applicant entered the United States by presenting a photo-substituted Jamaican passport in someone else's name. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not dispute this finding.

Section 204(a)(1)(A) of the Act provides:

(iii) (I) An alien who is described in subclause (II) may file a petition with the [Secretary] under this clause for classification of the alien (and any child of the alien) if the alien demonstrates to the [Secretary] that--

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this subclause is an alien--

(aa)(AA) who is the spouse of a citizen of the United States;

The AAO notes that the record establishes that the applicant filed his Form I-360 petition as the abused spouse of a United States citizen under Section 204(a)(1)(A)(iii) of the Act. Section 212(i) authorizes the Secretary to waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien granted classification under clause (iii) of section 204(a)(1)(A) if the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified parent or child.

The applicant does not have a parent or child who is a U.S. citizen or lawful permanent resident of the United States. Accordingly, as the beneficiary of an approved I-360, the applicant must demonstrate *extreme hardship to himself upon relocation*. A waiver of inadmissibility under section 212(i) of the Act in this case 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 and the applicant himself. If extreme hardship to a qualifying relative or the applicant 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 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. *Supra* at 565. 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 a statement dated February 5, 2010, the applicant states Jamaica "holds very bad memories" for him; his father was physically abusive and he witnessed his brother's murder. As a result he believes that if returned to Jamaica, his "life would still be in danger." In a statement dated February 4, 2010, the applicant's brother states the applicant received threats from the men who murdered their brother, and that it would be

“mentally very difficult” for the applicant to return to Jamaica. In a psychological evaluation dated August 10, 2007, licensed social worker [REDACTED] states the applicant “has suffered extreme emotional hardship due to the physical and emotional abuse he has experienced” from his father and his ex-wife. She states that he “has been depressed, sad, lonely and anxious.” In her appeal brief dated February 4, 2010, counsel claims that after the applicant moved to a different parish, he continued to receive threats to his life. Counsel also claims that because of the applicant’s “turbulent history,” he would be more vulnerable and likely to face extreme hardship in Jamaica. She states that given the applicant’s experiences and character, he “would probably have a much more difficult time fitting in than the average individual who is sent back.” Moreover, the applicant states the “poverty and killings” in Jamaica “are impossible to live with.”

Counsel states the applicant would have to start all over in Jamaica, and “[e]mployment opportunities in Jamaica are extremely limited.” In a statement dated January 4, 2010, [REDACTED] states the applicant does not have any connections in Jamaica that would help him get a job. The applicant states that in Jamaica, he would be unable “to provide for [his] family.” Counsel also claims that the applicant wants “to further his education.” The record does not show that the applicant cannot pursue his education in Jamaica. Counsel also states the applicant has resided in the United States for many years, and even though he has family in Jamaica, they have “their own issues,” and he could not “simply go back to living with his family.” The AAO notes that the applicant’s family may be unable to help support the applicant; however, nothing in the record establishes that the applicant has to reside with his family or that he will be dependent on their support. Additionally, without supporting evidence, the assertions of counsel will not satisfy the applicant’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel states the applicant “is extremely passionate about his job” helping the homeless. In a letter dated February 4, 2010, Mr. [REDACTED] states the applicant is employed by [REDACTED] as a Program Aide. The applicant states that in his job, he helps many people and he feels fulfilled. [REDACTED] states the applicant’s family in Jamaica relies on him.

The AAO acknowledges that the applicant has been residing in the United States for many years and relocation abroad would involve some hardship. However, the applicant is a native and citizen of Jamaica and it has not been established that he is unfamiliar with the culture or that he has no family ties to Jamaica. Additionally, the record does not contain documentary evidence showing that the applicant would be unable to obtain employment upon relocation that would allow him to use the skills he has acquired in the United States. Going on record without supporting documentation is not sufficient to 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)). Further, the applicant may believe his life is in danger in Jamaica; however, no documentary evidence was submitted establishing that he cannot reside in another area of Jamaica where he will be safe. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that he would suffer extreme hardship if he relocated to Jamaica.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant, considered in the aggregate, rise 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 himself, as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds 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 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.