

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

[REDACTED]

715

DATE: **NOV 06 2012**

Office: KINGSTON, JAMAICA

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 in accordance with the instructions on 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 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 attempting to procure admission into the country by fraud or willful misrepresentation of a material fact. The applicant is the daughter of a U.S. citizen, and she 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 reside in the United States with her mother.

The director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen mother, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, on April 8, 2011.

On appeal, counsel asserts that United States Citizenship and Immigration Services (USCIS) erred in denying the waiver application as the applicant's mother would experience extreme hardship if she remains in the United States without the applicant or relocates to Jamaica.

The record includes, but is not limited to: counsel's brief, country conditions information on Jamaica; documentation regarding the applicant's immigration history; affidavits from the applicant's mother; documentation from a medical center where the applicant's mother is currently a patient; and a letter from the mother's doctor. The entire record was reviewed and all relevant evidence considered in reaching this decision.

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

- (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.

The record reflects that on February 11, 2001, the applicant attempted entry into the United States by presenting a photo-substituted Jamaican passport with an altered U.S. visa in the name of [REDACTED]. A Form I-867, Record of Sworn Statement, contained in the record indicates that, on the same day, the applicant, under oath, stated her true identity as [REDACTED]. The Form I-867 also reflects that the applicant admitted to presenting the same documentation to enter the United States in 2000. Based upon the foregoing, the applicant is

¹ The AAO notes, however, that the record fails to indicate that the applicant has ever held the identity of [REDACTED]. Further, the date of birth she provided in her sworn statement, as well as her place of birth in Jamaica, differ from the information provided on the Form I-130, Petition for Alien Relative, and her DS-230, Application for Immigrant Visa and Alien Registration. Accordingly, the AAO concludes that the applicant again misrepresented her identity in providing her February 11, 2001 sworn statement.

inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The applicant does not contest her inadmissibility on appeal.

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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission would result extreme hardship for a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. In the present case, the applicant's only qualifying relative is her U.S. citizen mother.² Hardship to the applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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

² Although the applicant has indicated that her father is a lawful permanent resident of the United States, no documentary evidence in the record establishes that this is the case. Accordingly, the applicant's mother is her only qualifying relative.

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 BIA 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.

On appeal, counsel asserts that the applicant's mother is struggling financially in the United States as she has had to reduce her hours of employment due to her health, which has resulted in a significant pay cut. She also maintains that the applicant's parents must send the applicant \$300 every other month since she is unable to find employment in Jamaica.

In an October 28, 2009 affidavit submitted by the applicant, the applicant's mother indicates that she has chronic venous stasis insufficiency and has been advised by her physician, [REDACTED], to limit the number of hours she works. The applicant's mother also indicates that she has reduced her hours each day from sixteen to approximately eight, and will not be able to work

the eight hours for too much longer. The applicant's mother states that she will not be able to financially support herself without the help of the applicant and that she also needs the applicant to help take care of her. The applicant's mother also asserts that the applicant, who has two children of her own, is her only child still residing in Jamaica and that she is unable to find work in Manchester, Jamaica. The applicant's mother further maintains that she and her husband are currently supporting the applicant and their grandchildren.

A second affidavit from the applicant's mother, dated June 7, 2011, indicates that after September 11, 2001, she moved to Hendersonville, North Carolina, where one of her daughters resides; that her husband remained in New York as he did not want to leave his stable employment; that in addition to *their separate bills, she and her husband financially support the applicant and her two children in Manchester, Jamaica*; that Jamaica has been plagued with high unemployment and the applicant has been unable to find employment; and that she worries about the applicant and her grandchildren as Jamaica has high crime rates and innocent individuals are injured or killed every day. Regarding her medical condition, the applicant's mother reiterates that she has chronic venous stasis insufficiency, which requires her to take one ibuprofen per day and to wear two support stockings at all times to prevent swelling. The applicant's mother states that she is currently working seven hours a day as a dietary chef at a nursing home, which requires her to stand on her feet all day. The applicant's mother states that she and her husband are barely making ends meet as they are supporting their households (she states that she earns \$417 every two weeks and her husband earns \$35,000 a year), as well as that of the applicant and *her two children (\$300 every other month)*. The applicant's mother asserts that in order to reduce the hours she must work, she needs the applicant in the United States to help support her. The applicant's mother also states that she suffers emotionally as the applicant is her only daughter who is not in the United States with her.

An October 21, 2009 letter from [REDACTED] indicates that the applicant's mother has been a patient of the Pardee Wound Healing Center and that she suffers from chronic venous stasis insufficiency, a life-long condition that is exacerbated by being on one's feet for long periods of time. He reports that the applicant's mother previously presented with a large ulcer on her leg but that the wound was healed and that she has been fitted with support stockings. Dr. [REDACTED] also indicates that he has suggested that the applicant's mother attempt to limit her work day to eight hours. The record contains the applicant's mother's medical chart summary, dated June 3, 2011, from [REDACTED] in Hendersonville, North Carolina, which contains a handwritten statement from a medical records coordinator indicating that the applicant's mother is a patient at the medical facility.

Although the AAO acknowledges the applicant's mother's claims of financial, physical and emotional hardship, we do not find the record to support them. The applicant's Form I-601 reflects that her father and two sisters are lawful permanent residents residing in the United States, and that, as indicated by the applicant's mother in her June 7, 2011 affidavit, one of the applicant's sisters resides in Henderson, North Carolina, the same city as their mother. We find nothing in the record to demonstrate that any of these family members, and particularly the applicant's sister in Henderson, would be unable or unwilling to provide whatever care or

assistance the applicant's mother might require now and in the future. The record also lacks proof of financial hardship as it fails to document: (a) the applicant's parents' incomes; (b) their expenses and financial responsibilities in the United States; and (c) their financial support of the applicant. Moreover, the applicant has provided no documentary evidence of the emotional impact of continued separation on her mother. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Accordingly, the AAO finds that the record fails to establish that the applicant's mother would suffer extreme hardship if the applicant's waiver application is denied and she remains in the United States.

On appeal, counsel asserts that relocation to Jamaica would result in extreme hardship for the applicant's mother. She contends that the director erred in denying the waiver application because he failed to consider country conditions in Jamaica. Counsel's claim, however, is without merit as no claim of hardship upon relocation was raised by the applicant when she filed the waiver application and, in the absence of clear assertions from the applicant, USCIS may not speculate as to what hardships a qualifying relative would encounter upon relocation.

To establish extreme hardship upon relocation, counsel now states that moving to Jamaica would result in emotional hardship for the applicant's mother as she would be required to leave her family behind in the United States. Counsel also maintains that if the applicant's mother were to return to Jamaica, she would not be able to get a job since there are high rates of unemployment and her medical condition limits the number of hours she can stand. She further states that the applicant's mother is suffering from chronic venous stasis insufficiency and that if left untreated, it could result in a blood clot or worse. To establish conditions in Jamaica, counsel reports that U.S. citizens are often targeted for theft crimes and for sexual assault; that drugs are a huge problem; that the country is a source, transit point, and destination for sexual exploitation and forced labor for women and children; that hurricanes and pollution are recurring problems; and that medical treatment and care in Jamaica cannot begin to compare with the level of medical care available in the United States. Counsel also asserts that 16.4% of the population in Jamaica live below the poverty line; that the current unemployment rate is 12.9%; that the public debt is 123.2%; and that the rate of inflation is 13%. She submits country conditions information to support these claims.

The AAO acknowledges that the applicant's mother in leaving her husband and daughters in the United States would experience emotional hardship. The record, however, does not document, e.g., psychological evaluation or other medical report, the nature or extent of the emotional impact that such a separation would have on the applicant's mother. The AAO has also considered the applicant's mother's medical condition and counsel's assertion that if her medical condition is left untreated, it could result in a blood clot or worse. However, counsel's claim is again not supported by the record. The document from WNC Family Medical Center only serves to establish that the applicant's mother is a patient at the facility; it does not address her medical history. Dr. [REDACTED] letter references only the healing of the applicant's mother's wound, the fitting of support stockings and his suggestion that she reduce the number of hours she stands or

sits. Thus, the record does not establish what type of medical treatment the applicant's mother requires or that she could not obtain such medical treatment in Jamaica. Further, while we note the country conditions materials in the record that report on the high rate of crime in Jamaica, the drug trade in Jamaica and its economic problems, these general overviews of conditions in Jamaica do not demonstrate that the applicant's mother would experience extreme hardship upon return to Jamaica. General economic or country conditions in an applicant's native country do not establish hardship in the absence of evidence that the conditions would specifically impact the qualifying relative. See *Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996) (citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir. 1985)).

The AAO recognizes that the quality of life in Jamaica differs from that of the United States, that the applicant's mother has resided in the United States for many years, and that she may experience hardship as a result of relocation to Jamaica to be with the applicant. However, the AAO finds that the record does not contain sufficient evidence to show that the hardships she would face in Jamaica, even when considered in the aggregate, would rise beyond those disruptions and difficulties normally created by relocation. Therefore, the applicant has also failed to establish that a return to Jamaica would result in extreme hardship for her mother.

The applicant has failed to establish extreme hardship to her U.S. citizen mother, as required for a waiver 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 she merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. 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.