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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090
**U.S. Citizenship
and Immigration
Services**

DATE: **APR 25 2013** OFFICE: TAMPA (ROYAL PALM BEACH, FL)

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:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The District Director, Royal Palm Beach, Florida, denied the waiver application. The applicant, through previous counsel, appealed the District Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. On May 2, 2012, the applicant, through current counsel, filed a motion to reopen and reconsider the AAO's decision in accordance with 8 C.F.R. § 103.5. The motion will be granted. The previous decision of the AAO will be affirmed.

The applicant is a native of Jamaica and citizen of Jamaica and Canada¹ 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 having attempted to procure admission to the United States by falsely claiming to be a U.S. citizen. The District Director concluded the applicant failed to establish extreme hardship would be imposed upon a qualifying relative, and denied his Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The AAO affirmed the District Director's decision on appeal.

On motion, counsel contends the AAO should reopen the applicant's case as a waiver is unnecessary since the evidence in the record demonstrates the applicant timely and voluntarily recanted his alleged false statement, and prior counsel failed to provide a personal, signed statement by the applicant's spouse attesting to the extreme hardship she would suffer because of his inadmissibility. Counsel also contends the AAO should reconsider its denial of the applicant's appeal and make a *de novo* assessment of extreme hardship based on the applicant's spouse's statement concerning the extreme medical and economic hardships her family would endure.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). As the applicant has submitted new documentary evidence to support his claim and asserted reasons for reconsideration, the motion to reopen and reconsider will be granted.

The record includes, but is not limited to: briefs, a motion, and correspondence from current and previous counsel; letters of support; identity, psychological, employment, financial, and academic documents; Internet articles; photographs; and documents on conditions in the United States. The entire record was reviewed and considered in rendering a decision on the appeal.

¹ The AAO notes previous counsel did not address on appeal whether the applicant maintained Jamaican citizenship, but on motion, current counsel indicates the applicant is a citizen of Jamaica and Canada.

Section 212(a)(6) of the Act provides:

(C) Misrepresentation.-

(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.

(ii) Falsely claiming citizenship.-

(I) In general.- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

(II) Exception.- In the case of an alien making a representation described in subclause (I), if each natural parent of the alien ... is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

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

The District Director found the applicant inadmissible for having attempted to procure admission to the United States on August 28, 1993, by presenting a U.S. passport that did not belong to him. On motion, counsel asserts that the applicant timely retracted his misrepresentation and did not do anything that 'shut off a line of inquiry that may have resulted in exclusion.' *See Brief in Support of the Motion*, citing *Matter of S-& B-C-*, 9 I&N Dec. 436 (BIA 1960). The AAO finds counsel's conclusion to be unpersuasive as the analysis concerning whether the applicant's actions "shut off a line of inquiry that may have resulted in exclusion" addresses the materiality of a misrepresentation and not the timeliness of its retraction. *Matter of S-& B-C-*, *supra*.

However, counsel asserts the applicant timely retracted the misrepresentation made in connection with his attempt for admission upon arrival in Miami, Florida, by revealing he was not the true owner of the U.S. passport. The AAO notes a timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for section 212(a)(6)(C)(i) eligibility. *See, e.g., 9 FAM 40.63 N4.6*. Whether a retraction is timely depends on the circumstances of the particular case. *Id.* In general, it should be made at the first opportunity. *Id.*

If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview. *Id.*

The record demonstrates the applicant presented to immigration officials at Miami International Airport a U.S. passport that did not belong to him, and he was able to clear various checkpoints as a U.S. citizen through the "ACE" program that was in effect in August 1993. During secondary inspection, the applicant admitted he was a citizen of Jamaica, and he was not the individual identified as the owner of the U.S. passport. The record reflects the applicant had no intention of revealing his true identity or surrendering the passport upon presenting it to U.S. immigration officials in August 1993. Instead, he used the document to pass through various checkpoints as a U.S. citizen and admitted the document did not belong to him only during his secondary inspection by immigration officials. Therefore, the applicant cannot be said to have been acting "timely" to purge the misrepresentation of his identity and citizenship. He was correctly found to be inadmissible under section 212(a)(6)(C)(i) of the Act, and he requires a waiver under section 212(i) of the Act.²

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

(1) The Attorney General [now 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 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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only demonstrated qualifying relative in this case. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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

² Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) afford aliens in the applicant's position, those making a false claim to U.S. citizenship prior to September 30, 1996, to be determined inadmissible under section 212(a)(6)(C)(i) of the Act, and thereby, eligible for a waiver under section 212(i) of the Act. *See Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service*, dated April 8, 1988 at 3.

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 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 Id.* at 568; *In re 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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 v. I.N.S.*, 138 F.3d 1292, 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 support of the applicant's motion, counsel contends the applicant's spouse would suffer extreme emotional and financial hardship as: she and the applicant have been in a relationship for over 15 years; she "has been diagnosed with depression since December 5, 2009," and is currently in therapy; hardship experienced by their children would be felt by the applicant's spouse, their mother; and both of her properties have been affected by the economy and the subprime real estate market. In support of his contentions, counsel references unpublished decisions of the AAO, indicating the AAO has previously found economic and medical circumstances to be contributing factors in finding extreme hardship. The AAO notes that only AAO decisions that are published and designated as precedents in accordance with the requirements discussed in 8 C.F.R. § 103.3(c) are binding on Service officers. The decisions referenced by counsel are unpublished and not designated as precedent decisions. The findings made in the other AAO decisions, therefore, have no binding precedential value for purposes of the applicant's case.

The applicant's spouse also discusses: the importance of family unity; being with the applicant for over 15 years; increasingly suffering from depression and anxiety because of the applicant's immigration circumstances; making her mortgage payments only with the applicant's help; and how their children worry about the applicant, their father.

Although the applicant's spouse may experience emotional and financial hardship in the applicant's absence, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. Dr. [REDACTED] diagnosed the applicant's spouse with major depressive disorder in 2009, and licensed mental health counselor [REDACTED] further diagnosed the applicant's spouse with anxiety disorder in 2012. However, the AAO notes Dr. [REDACTED]'s assessment does not include any discussion of ongoing treatment of the applicant's spouse or an indication the applicant's presence would be advantageous in such treatment. Absent an explanation in plain language from the treating mental health professional of the nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a mental health condition or the treatment needed.

Additionally, the AAO notes Dr. [REDACTED]'s assessment indicates that numerous psychosociological research studies discuss the consequences to preteen and teenage daughters who live in a fatherless home, and home and parental stability have an impact on personality development and structuring. However, Dr. [REDACTED] does not evaluate the applicant's children in light of the studies, and he does not provide any sociological or scholarly sources other than a reference to a 2005 study conducted by the U.S. Department of Health and Human Services

Further, the record establishes the applicant reported to the Internal Revenue Service an income in 2011 of \$56,438.93 and his spouse reported an income of \$55,481.93. *See Form W-2 Wage and Tax Statements*. The record also establishes the applicant's spouse has real property obligations. However, the AAO notes the documentation concerning their automobile payments submitted on

motion does not include information concerning the obligor. And, in its previous decision, the AAO noted the record did not include evidence of labor or employment conditions in Canada, demonstrating the applicant's inability to contribute to the maintenance of his and his spouse's households. The AAO notes the motion does not include evidence to address this concern. The AAO further notes the record does not include any evidence of labor or employment conditions in Jamaica. The AAO is thus unable to conclude the record establishes the applicant's spouse's hardship would go beyond that which is commonly expected.

The AAO notes the concerns regarding the hardship the applicant's spouse may experience in the applicant's absence, but finds that even when evidence of this hardship is considered in the aggregate, the record fails to establish the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

In support of the applicant's motion, counsel contends the applicant's spouse would suffer extreme hardship upon relocation to Canada to be with the applicant as: she has lived in the United States since 2002; she is employed by [REDACTED] as a certified nursing assistant and was recently accepted into the practical nursing program at [REDACTED] there is a nursing shortage in the United States³; and her family is the type the U.S. government should endeavor to keep in America. The applicant's spouse also attests: she obtained her lawful permanent residency from her mother in 2002; she and her children are unable to move to Canada because the choice to remain in the United States is one of "survival and [in] the best interests of [their] children"; she finds herself having to choose between a united family in the United States and leaving all that she has accomplished; her children are doing well in school, and they do not want to leave their friends or the United States, "the only place they consider home"; she "always had the passion to become a nurse to take care of the sick," and she will forfeit her place in the nursing program unless she registers by May 7, 2012; she has maintained steady employment at [REDACTED] for the past nine years; it takes at least three years to obtain citizenship in Canada, where she must show that she has a job and funds to support herself and their children; and she would "lose a lot of money" on the sale of her real properties.

Although the applicant's spouse may experience hardship upon relocating with her children to be with the applicant in Jamaica or Canada, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record reflects the applicant's spouse is a national of Jamaica, and thereby, should have reduced difficulty in acclimating to the culture and society there. Also, the record does not include sufficient evidence regarding the extent to which she maintains familial or social ties there. Moreover, the AAO notes the record does not include any evidence of economic, employment, labor, political, or social conditions in Jamaica and their impact on the applicant's spouse and

³ The AAO notes counsel has requested the AAO to take "judicial notice" of the nursing shortage in the United States. As the shortage of nurses in the United States does not have any bearing on the hardship that the applicant's spouse would experience because of the applicant's inadmissibility, the AAO finds it is unnecessary to take administrative notice.

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children other than what was reported in Dr. [REDACTED] assessment. The record does not include any evidence of Dr. [REDACTED] qualifications or expertise to make such statements. 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 cannot conclude the record establishes the spouse's hardship would go beyond the norm upon relocation to Jamaica.

Additionally, the record does not include any evidence of nationality and citizenship laws in Canada or their impact on the applicant's spouse and her children. Also, the record does not include any evidence of labor and employment conditions in the field of nursing in Canada or of economic, political, or social conditions there. As previously noted, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.* Moreover, the AAO notes the document submitted in support of the applicant's spouse's acceptance to the Practical Nursing program at [REDACTED] appears to be a boilerplate acceptance letter that does not indicate any biographical information. Accordingly, the AAO gives reduced weight to the letter as evidence of the applicant's spouse's continuing educational opportunities. The AAO is thus unable to conclude the record establishes the applicant's spouse's hardship would go beyond that which is commonly expected.

The AAO notes the concerns regarding the hardship the applicant's spouse may experience upon relocation to Jamaica or Canada, but finds that even when evidence of this hardship is considered in the aggregate, the record fails to establish the applicant's spouse would suffer extreme hardship as a result of relocation with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion will be granted and the previous decision of the AAO will be affirmed.

ORDER: The motion is granted. The previous decision of the AAO is affirmed. The application remains denied.