



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: Office: PHILADELPHIA

APR 30 2013

[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 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Officer Director, Philadelphia, Pennsylvania. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be granted and the waiver application will be denied.

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 fraud or misrepresentation due to her use of a fraudulent passport to gain admission to the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen husband. The applicant seeks a waiver of inadmissibility pursuant to INA § 212(i), 8 U.S.C. § 1182(i).

The Field Office Director concluded that the required standard of proof of extreme hardship to the applicant's U.S. citizen spouse was not met and the application was denied accordingly. See *Decision of the Field Office Director*, dated April 11, 2011. On appeal, the AAO concurred with the Field Office Director that extreme hardship to a qualifying relative had not been established, as required by the Act. Consequently, the appeal was dismissed. See *Decision of the AAO*, dated October 12, 2011.

In the motion to reconsider, the applicant's attorney asserts that the record contains sufficient evidence to show that the applicant's U.S. citizen relatives would suffer extreme hardship if the applicant was removed and that the applicant satisfies the requirements of *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999).

The record includes, but is not limited to, an Application for Waiver of Grounds of Inadmissibility (Form I-601); two Notices of Appeal or Motion (Forms I-290B); letters from the applicant and qualifying spouse; newspaper articles regarding conditions in Jamaica; an Application to Register Permanent Residence or Adjust Status (Form I-485) with accompanying documents; relationship and identity documents for the applicant, qualifying spouse and their children; documentation regarding the applicant's criminal record; financial documentation; a letter from the applicant's spouse's employer; reference letters regarding the applicant; insurance documents for the applicant, her spouse and their children; medical records for routine healthcare for the applicant's children; and an approved Form I-130. On motion, the record was supplemented to include a brief written on behalf of the applicant, medical records regarding the applicant and qualifying spouse's children; and country-condition materials regarding Jamaica. The entire record was reviewed and considered in rendering this decision.

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). Counsel on motion asserts that the applicant satisfied the requirements of *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), and provided sufficient evidence to demonstrate that the applicant's U.S. citizen relatives would suffer extreme hardship if the applicant was removed. The new evidence submitted on motion includes a

brief written on behalf of the applicant; medical records regarding the applicant and qualifying spouse's children; and country-condition materials regarding Jamaica. The AAO will grant the motion to reconsider the proceedings, reevaluate the qualifying spouse's potential hardships upon separation and relocation, and consider the new documentation submitted in support of the motion to reconsider.

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

- (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.

On October 23, 1997, the applicant presented a passport and visa in the name of [REDACTED] at a U.S. port of entry in Philadelphia, Pennsylvania. The applicant had substituted her photo on the visa. The visa was annotated to show that she was traveling to attend the funeral of her mother in Philadelphia. She was admitted to the United States as [REDACTED]. In fact, the applicant's true and full name is [REDACTED] and, according to the record, her mother is not deceased, but rather resides in Jamaica. As a result of this misrepresentation of a material fact, the applicant is inadmissible under INA § 212(a)(6)(C)(i). The applicant does not contest this finding of inadmissibility.

Section 212(i) of the Act provides:

- (1) The Attorney General [now Secretary of the Department 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.

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. The applicant's husband is the only qualifying relative in this case. 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 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.

The AAO concluded in our prior decision that the applicant failed to establish that the qualifying spouse would suffer extreme hardship upon separation from the applicant. With regard to the potential hardships to the qualifying spouse upon separation, the AAO considered the qualifying spouse's assertions regarding his emotional and physical hardships and found that the applicant's claims were not supported by sufficient evidence; the AAO therefore could not determine the weight to assign these hardships. On motion, the applicant's counsel reasserts that the qualifying spouse would have the sole responsibility to take care of his children if the applicant were to return to Jamaica. However, the applicant provides no evidence to explain how her qualifying spouse's emotional and physical hardships would be outside the ordinary consequences of removal. Moreover, no new additional evidence was provided on motion to address these issues, other than the assertions of counsel.

On motion, the applicant's attorney claims that the applicant's spouse's medical hardship "would be significantly increased" upon separation from the applicant. In our prior decision, the AAO found that the evidence did not demonstrate that the qualifying spouse has ongoing health issues, is at particular risk for a certain type of illness, or that the loss of the applicant's support would be detrimental to his health. No new evidence was provided on motion to address the concerns of the AAO or to support the assertions of counsel. Absent an explanation in plain language from the treating physician of the exact 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 medical condition or the treatment needed.

The AAO also asserted in our prior decision that the qualifying spouse failed to provide sufficient evidence to demonstrate that he would encounter financial hardships upon separation from the applicant. No new evidence was provided on motion to corroborate claims that the qualifying relative would suffer financial hardships upon his separation from the applicant.

On motion, the applicant's attorney asserts that the applicant and qualifying spouse's children will face medical hardships if they remained in the United States without their mother or relocated to Jamaica with her. The applicant's attorney specifically notes that their daughter "has significant breathing problems" that would negatively impact the qualifying spouse, yet no evidence was provided to show how the children's health issues negatively affect him. Congress did not include hardship to the applicant or to the applicant's children as a consideration in the determination of whether an individual should be granted a waiver of inadmissibility. Although the medical hardships suffered by their children may affect the applicant's U.S. citizen spouse, those hardships and the specific effects of the hardship on the qualifying spouse have not been documented in the record. The AAO acknowledges that the applicant's U.S. citizen spouse will experience emotional hardship if he remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, even when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor but concludes that the hardship to the applicant's spouse, as described by the applicant and her spouse and as demonstrated by the evidence in the record, is the common result of removal or inadmissibility and does not rise to the level of extreme hardship.

The AAO also concluded in our prior decision that the applicant failed to establish that the qualifying spouse would suffer extreme hardship if he were to relocate to Jamaica with her. On motion the applicant's attorney asserts that the qualifying spouse would be unable to find employment in Jamaica and could not live there because of the high crime rate. The record was supplemented on motion to include additional articles regarding violence, the shortage of nurses, unemployment, and healthcare in Jamaica. The AAO previously found that the applicant failed to demonstrate how the conditions in Jamaica will affect her spouse, a native of Jamaica. While the additional evidence demonstrates that safety concerns and unemployment issues in Jamaica, the record does not show how such issues would specifically affect the qualifying spouse. All evidence in the record of hardship to the applicant's spouse, should he relocate to Jamaica, has been considered in aggregate. Based on the foregoing, the applicant has not shown that her husband will endure extreme hardship should he join her in Jamaica.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 her 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.

ORDER: The motion will be granted, the previous decision affirmed and the waiver application denied.