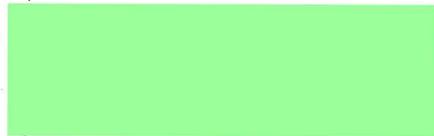




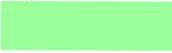
U.S. Citizenship  
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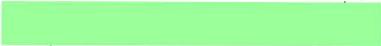
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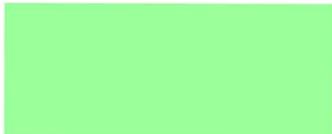
Office: WEST PALM BEACH

FILE: 

IN RE: 

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,

Ron Rosenberg, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, West Palm Beach, Florida. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

The applicant, a native and citizen of Jamaica, was found inadmissible 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 willful misrepresentation of a material fact. 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 his U.S. citizen spouse and U.S. citizen mother. The AAO notes that the applicant is also inadmissible under section 212(a)(9)(A) of the Act as the result of his most recent order of exclusion, which was entered by the Immigration Judge on June 20, 1996. He will require Permission to Reapply for Admission after Deportation or Removal in regards to that ground of inadmissibility, which is not the subject of the present motion.<sup>1</sup>

The Field Office Director concluded that the hardship to the applicant's qualifying relatives did not rise to the level of extreme as required by the statute. The applicant appealed that decision and the AAO dismissed the appeal on September 21, 2012, finding that the applicant failed to establish extreme hardship to his qualifying relatives in the case that they were to relocate to Jamaica to reside with the applicant. The applicant filed a motion to reopen and reconsider the AAO decision.

On motion, counsel submits new evidence in support of the application asking the AAO to reopen and reconsider the prior decision.

A motion to reopen must state the new facts to be proved in the reopened proceeding 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 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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<sup>1</sup> The applicant was ordered excluded from the United States on May 14, 1992 and again on June 20, 1996 after he was paroled into the United States. If the applicant remained outside of the United States for a period of one year after his May 14, 1992 exclusion order, he only requires permission to reapply for admission after removal or exclusion in regards to his 1996 exclusion order. The record does not contain an Application for Permission to Reapply for Admission after Deportation or Removal (Form I-212) in connection with the applicant's 1996 exclusion order. The AAO notes that the applicant previously filed a Form I-212 before the Immigration Judge on May 18, 1994, however, that application was denied and the applicant was ordered excluded.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant was found to be inadmissible under section 212(a)(6)(C) of the Act, which 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.

The applicant is inadmissible under section 212(a)(6)(C) of the Act as a result of his attempted admission into the United States using photo-substituted Canadian citizenship card issued to a different individual on January 1, 1992 which resulted in him being ordered excluded from the United States in absentia on May 14, 1992. The applicant is also inadmissible under this section as the result of his failure to disclose his exclusion order and prior use of fraud or material misrepresentation in his attempted admission to the United States when seeking and obtaining an immigrant visa at the U.S. Consulate on December 14, 1993. The applicant's misrepresentation was discovered when he presented himself for admission to the United States on December 22, 1993 at the port-of-entry. The applicant does not contest his inadmissibility under section 212(a)(6)(C) of the Act.

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 AAO notes the Field Office Director's mention of the applicant's criminal history. The record indicates that on November 28, 2012 the applicant was convicted of disorderly conduct and resisting officer without violence before the [redacted] in St. Lucie, Florida. The record also shows that the applicant was convicted of Driving under the Influence on two occasions in New York, first on November 2, 1998 and again on March 22, 2004. The Field Office Director, however, did not find the applicant to be inadmissible under any criminal grounds. Moreover, the AAO does not note any documentation in the record that would suggest the applicant is inadmissible under criminal grounds for these convictions. The AAO also notes that the applicant has not sought a waiver for criminal grounds of inadmissibility. As such, should

it be determined that that applicant is inadmissible for criminal grounds, he would need to seek a separate waiver of that ground of inadmissibility.

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 U.S. citizen or lawful permanent resident spouse or parent. Hardship to the applicant or his children is not considered in 212(i) waiver proceedings unless it is shown to cause hardship to a qualifying relative, in this case the applicant's spouse and mother. 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 deportation, 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, 885 (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 1292, 1293 (9th Cir. 1998) (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 previously determined that the applicant's U.S. citizen spouse and mother would experience extreme hardship as a result of separation from the applicant. We see no reason to disturb that finding. Counsel, however, did not make a claim for hardship in the case that the applicant's spouse or mother was to relocate to Jamaica. On motion, however, counsel for the applicant presents new evidence and states that the applicant's U.S. citizen spouse and mother would both experience hardship as well if they were to relocate to Jamaica to reside with the applicant. In regards to the applicant's spouse, the record indicates that she would suffer financial, emotional, and physical hardship if she were to relocate to Jamaica. A letter in the record dated October 11, 2012, from the H.R. Consultant for [REDACTED] states that the applicant's spouse has been employed as a Registered Nurse with [REDACTED] since December 27, 2005. The record, including the applicant and his spouse's federal income tax returns, indicate that the applicant's spouse is the sole breadwinner for the family. The record also indicates that the applicant's spouse's employment is the source of health care for her and her three dependent children, as well as for the applicant. Documentation in the record indicates that the applicant's spouse relies on the health care for her children as well as her own needs, which include back pain, abdominal pain, and knee pain. The record also indicates that the applicant's spouse has credit card debt in excess of \$11,000 and a mortgage on the home that she and the applicant own, which totals \$289,036.64. The AAO notes the country conditions reports in the record that indicate that crime, including violent crime, is a serious problem in Jamaica. The AAO also notes the applicant's spouse's financial situation and the financial hardship she would suffer as a result of her responsibility for her three dependent children, her mortgage, and her credit card debt. The record indicates that the applicant's spouse is a native of Jamaica but has resided in the United States since she was 16-years-old, maintaining full-time employment since her graduation from high school here. The AAO concludes that, considering the evidence in the aggregate, the applicant's spouse would experience extreme hardship should he relocate to Jamaica to reside with the applicant. As we have found that the applicant has established extreme hardship to his U.S. citizen spouse in the event of separation as well as relocation, we need not consider whether the applicant's U.S. citizen mother would also experience extreme hardship.

When the specific hardship factors noted above and the hardships routinely created by the separation of families are considered in the aggregate, the AAO finds that the applicant has established that his spouse would face extreme hardship if the applicant's waiver request is denied. The applicant has established statutory eligibility for a waiver of his inadmissibility under section 212(i) of the Act. In that the applicant has established that the bar to his admission would result in extreme hardship to his qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives)...

*Id.* at 301. The AAO must then, "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The mitigating factors include the hardship to the applicant's U.S. citizen spouse, mother, and three children, the numerous letters in the record documenting the applicant's moral character, and the length of the applicant's residence in the United States during which time he has sought to rectify his immigration status.

The adverse factors in the present case are the applicant's misrepresentations for which he now seeks a waiver, his longtime presence in the United States after his exclusion order, and his criminal history, which includes convictions for serious offenses including driving under the influence and resisting an officer without violence. The record shows a long history of violations of criminal laws in the United States and does not illustrate that the applicant is rehabilitated or working towards rehabilitation, as evidenced by his recent convictions.

We determine that based on the record before us, the negative factors outweigh the positive factors.

In proceedings for an 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. After a careful review of the record, the AAO finds that in the present motion, the applicant has not met this burden. Accordingly, the motion is granted and the underlying appeal is dismissed.

**ORDER:** The motion is granted and the waiver application remains denied.