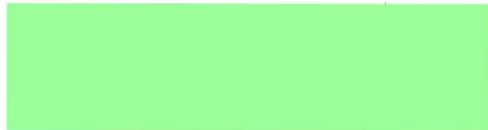


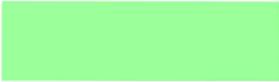


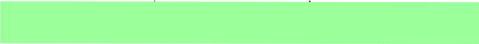
U.S. Citizenship
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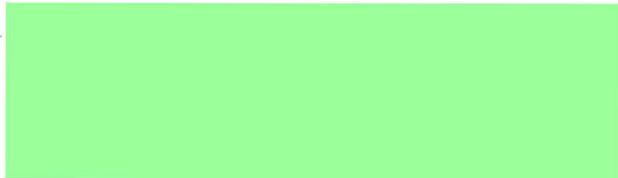
DATE: FEB 08 2013 OFFICE: NEW YORK, NEW YORK

FILE: 

IN RE: Applicant: 

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 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 District 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 having sought to procure entry to the United States through willful misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and their sons and daughters in the United States.

The District Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the District Director*, dated November 12, 2009.

On appeal, counsel asserts that the U.S. Citizenship and Immigration Services (USCIS) abused its discretion by denying the waiver application, despite evidence of extreme hardship to the applicant's spouse. *See Notice of Appeal or Motion (Form I-290B)*, dated December 7, 2009.

The record includes, but is not limited to: a brief and correspondence from counsel; letters of support; identity, psychological, medical, employment, financial, and academic documents; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

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

The District Director found the applicant inadmissible, in part, for having sought to procure admission to the United States on May 30, 2000, by presenting a photo-substituted Jamaican passport and chemically-altered nonimmigrant visa. The District Director also found the applicant inadmissible for having procured a K-1 nonimmigrant visa and not revealing during the application process that she was ordered removed from the United States under section 235(b)(1) of the Act for presenting the fraudulent passport and nonimmigrant visa in 2000. The record supports the findings,

and the AAO concurs that the misrepresentations were material. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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

- (1) The Attorney General [now the 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 and her sons and daughters can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only demonstrated qualifying relative in this case.¹ 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 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,

¹ The AAO notes that record indicates that the applicant's father and mother also may be qualifying relatives as a U.S. citizen since July 4, 1997 and a lawful permanent resident since December 14, 2003, respectively. However, in her appeal, the applicant does not assert extreme hardship to her parents.

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 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., *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.

Counsel contends that the applicant’s spouse would suffer extreme emotional, physical, medical, and financial hardship in the applicant’s absence as: he has been seeking psychological treatment since December 2006 and has been recommended for psychiatric counseling because his symptoms of depression are worsening; he has been experiencing intense psychological trauma due to the fear that the applicant may leave him or he may have to leave his children, similar to what he experienced when his mother left him as a child; he is extremely involved in his four U.S. citizen children’s lives, and he has temporary custody of two of his children since September 8, 2009; he has not worked in over three years, and depends on the applicant’s small, but steady and reliable source of income; and he would be permanently separated from the applicant as he would be unable to afford the travel expenses to visit her. Counsel also contends that the applicant’s spouse’s children would suffer hardship as they have endured a great deal of emotional turmoil and already have exhibited signs of depression. Counsel further contends that *Matter of W--*, 9 I&N Dec. 1 (BIA 1960), presented

hardship factors that are less compelling than those in the present matter as the applicant and her spouse are suffering from actual, life-threatening emotional, medical, and financial hardships and not just from the consequences of mere separation.

The applicant also discusses the manifestations of her spouse's gradual deterioration, his inability to accept the idea of a broken family, his fear of being unable to provide for his children, and that she only pays the minimum amount on their bills so they have heat and electricity in their home.

The applicant further discusses that the applicant is the only constant in his life, and he needs her to help him get "back on track", their efforts to save their residential and real property investments, and his unsuccessful business venture.

Although the applicant's spouse may experience hardship in the applicant's absence, the AAO finds that the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. [REDACTED] LCSW, concluded, "[The applicant's spouse] cannot imagine life without [the applicant]. It is clear from this interview, that it would be extreme emotional hardship on [him] and the children if [she] were no longer able to be with them here in New York." *Psychosocial Evaluation*, dated August 1, 2006. The AAO notes that Ms. [REDACTED] evaluation does not provide any specific diagnosis of the applicant's spouse's mental health or include any course of necessary treatment, demonstrating that the applicant's participation 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 record includes a letter, indicating that Dr. [REDACTED] has "seen [the applicant's] family over the past three years and [has] grown very familiar with them and the problems they are facing." *Psychological Letter*, notarized January 6, 2010. The AAO notes that the letter is internally inconsistent as the salutation refers to "Dr. [REDACTED] [emphasis added]" whereas the signatory section indicates "Dr. [REDACTED] [emphasis added]." The AAO also notes that the letter is inconsistent with New York licensing information publically accessible online as the [REDACTED] belongs to "[REDACTED] [emphasis added] [REDACTED]". See [REDACTED] [last accessed on January 10, 2013]. Moreover, the AAO notes that the letter is inconsistent with other information contained in the record. The record includes a letter from Dr. [REDACTED], indicating that he has known the applicant for over five years. See Dr. [REDACTED] Letter, dated July 31, 2006. Based on these inconsistencies, the AAO is unable to deduce the true level of knowledge Dr. [REDACTED] possesses regarding the applicant's spouse or the capacity in which he acquired his knowledge. Accordingly, we give reduced weight to the discussion and evaluation of the applicant's spouse's current mental health contained in the Psychological Letter notarized in 2010.

Further, the record is sufficient to establish that the applicant's spouse has been in arrears for some of his financial obligations and that he has indicated that he has been unemployed since August 2006. However, the AAO notes that the record does not include any evidence of the applicant's

current employment with [REDACTED] and the most recent tax document evidencing her family's household income is the 2006 Federal Income Tax Return. Accordingly, the AAO cannot conclude that the record establishes that the spouse's financial hardship would go beyond the normal consequences of inadmissibility.

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

Counsel contends that the applicant's spouse would suffer extreme hardship upon relocating to Jamaica to be with the applicant as: the applicant and her spouse have maintained constant contact with one another since she was 17 and he was 21-years-old; he has lived for almost 28 years in the United States; the majority of his family, including his children, are in the United States; he is extremely involved in his children's lives, including maintaining temporary custody of two of his U.S. citizen children since September 8, 2009; his children would suffer if he is forced to separate from them as they are already exhibiting signs of depression; and he does not have work in or other close connections to Jamaica.

The applicant's spouse further discusses: his four U.S. citizen and one lawful permanent resident children and adult sons and daughters as well as the effect that leaving them would have on him; his relationship with his parents and siblings, all of whom live in the United States; and the difficulties in obtaining a job in Jamaica because people are struggling there, he does not have any work contacts; and he has lived his entire adult life in the United States.

The record is sufficient to establish that the applicant's spouse would suffer hardship if he were to relocate to Jamaica. The record reflects that he has lived continuously in the United States for about 30 years, where he maintains close familial and community ties. And, although the record does not include reports on current employment and labor conditions in Jamaica, the AAO finds that, in the aggregate, the applicant's spouse would suffer extreme hardship as a result of relocation to Jamaica to be with the applicant.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. In re Pilch*, 21 I&N Dec. at 632-33. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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 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. Accordingly, the appeal will be dismissed.

The record further reflects that the applicant may be inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), by not withdrawing her application for admission and being ordered removed under section 235(b)(1) upon her arrival in the United States on May 30, 2000. If so, she will require permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

The applicant may apply for conditional approval of an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) under 8 C.F.R. § 212.2(j) before departing the United States, notwithstanding her ineligibility for adjustment of status. *See Instructions for Form I-212.* The approval of the Form I-212 under these circumstances is conditioned upon the applicant's departure from the United States, and the Field Office with jurisdiction over the applicant's place of residence has jurisdiction over the application, irrespective of whether a waiver under section 212(g), (h), (i), or 212(a)(9)(B)(v) is needed. *See Instructions for Form I-212, Appendix I.*

ORDER: The appeal is dismissed.