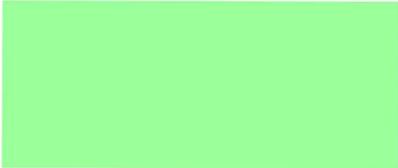




U.S. Citizenship
and Immigration
Services

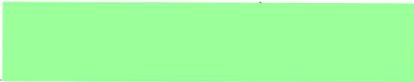
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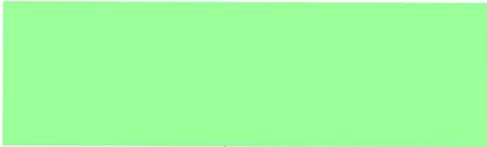
Office: KINGSTON, JAMAICA

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).

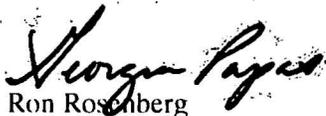
ON BEHALF OF APPLICANT:



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.

Thank you,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Kingston, Jamaica. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the underlying waiver application will be approved.

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 to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved 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 his U.S. citizen spouse and lawful permanent resident daughter.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated November 25, 2009. The AAO also found that the applicant had not established that denial of his waiver application would cause extreme hardship to his spouse and dismissed the appeal accordingly. *See AAO's Decision*, dated April 25, 2012.

On motion, counsel submits new evidence for consideration and asserts that the applicant's spouse would experience extreme financial and emotional hardship if the applicant's spouse were to relocate to Jamaica. *See Counsel's Brief accompanying Form I-290B, Notice of Appeal or Motion*, dated May 18, 2012.

A motion to reopen must state the new facts to be proved in the reopened proceedings 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). Counsel's motion meets the requirements for a motion to reopen, and therefore the motion is granted.

The evidence of record includes, but is not limited to: counsel's briefs, statements from the applicant's spouse and their family, a statement from the applicant's landlord, psychological evaluations of the applicant's spouse, letters from the health care professionals treating the applicant's spouse, character letters for the applicant, financial evidence, articles about health care and safety in Jamaica, and identification and relationship documents. The entire record was reviewed and considered in rendering this decision on the motion.

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.

In the present case, the record indicates that on April 26, 2002, the applicant sought admission to the United States by presenting a fraudulent passport in the name of [REDACTED]. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to procure admission to the United States through fraud or misrepresentation. Counsel does not contest the applicant's inadmissibility.

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 imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). In the instant case, the applicant's spouse is his qualifying relative.

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 now turns to the question of whether the applicant in the present case has established that his qualifying relative would experience extreme hardship as a result of his inadmissibility. 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. In its previous decision, the AAO concluded that the applicant established hardship to his spouse if she were to remain in the United States. Therefore, in this decision, the AAO addresses only the question of whether the applicant has established hardship to his spouse if she relocates to Jamaica.

On motion, the applicant's spouse states that because she has given up her Jamaican citizenship, she is no longer authorized to work in Jamaica. She is concerned that even if she were authorized, her occupation does not exist there and she has no contacts in the health-care field that could help her find work. She also is concerned that she would not be able to afford retraining and that she would experience age discrimination in her job search. The record establishes that she is a certified nursing assistant in Florida and earns about \$10 an hour.

Moreover, the applicant states that he lives in a rural town and earns about \$40 a day as a taxi driver. The applicant submits a statement detailing his expenses to show that his monthly income is not sufficient to cover his expenses. A letter from the applicant's son corroborates that the applicant also financially supports his mother. The applicant's son states that he is unable to financially assist the applicant.

The applicant's spouse states that the applicant's living situation is not conducive for a married couple. He has a male roommate and the conditions of the house are "extremely difficult" for her because of power outages and the lack of hot water, but the applicant cannot afford a better place. The applicant's spouse's aunt, who lives in Kingston, states that she cannot accommodate the applicant and his spouse; she lives on a limited retirement income with six individuals in her three-bedroom house. The applicant's spouse's aunt also states that the applicant's spouse's safety would be at risk because her community is "plagued with political and gang violence and crime."

With respect to the applicant's spouse's emotional hardship, the applicant submits a second psychological evaluation for his spouse, dated May 12, 2012. In his evaluation, Dr. [REDACTED] states that the applicant's spouse's major depressive disorder stems from the sexual abuse which she experienced during her teen years. According to Dr. [REDACTED] the applicant spouse has "periodic thoughts of suicide"; she is "delusional and paranoid" and experiencing symptoms of post-traumatic stress disorder. Dr. [REDACTED] states that if she must relocate, the applicant's spouse would "completely deteriorate under the burden of diminished income," and being far from her daughters and granddaughters "would be a death sentence." Dr. [REDACTED] concludes that relocating to Jamaica would remove the applicant's spouse from the environment in which she feels safe; she would become "more anxious and fearful" and would "act on any suicidal thoughts." Dr. [REDACTED] also states that based on his research, "mental health services and resources are extremely limited and inaccessible" in Jamaica.

Having reviewed the evidence in the record, the AAO concludes that the applicant has demonstrated that his spouse would experience extreme hardship if she relocates to Jamaica. In reaching this conclusion, we note the applicant's spouse's fragile mental condition and her psychologist's concerns about her well-being if she were to become isolated from her support system. We also note the applicant's spouse's financial concerns. Evidence demonstrates that the applicant's income alone is not sufficient to cover his own expenses. The applicant submits corroborating evidence to support claims that his spouse would have difficulty finding employment in Jamaica. Neither the applicant's nor his spouse's family members are able to financially assist them or provide housing if she relocates to Jamaica. Moreover, the Department

of State's country-specific information, last updated on January 8, 2013, corroborates the safety concerns about Jamaica raised on motion. Considering the hardship evidence in the aggregate, the AAO finds that the applicant's spouse would experience extreme hardship, should she relocate to Jamaica.

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(a)(6)(C) 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).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

See Matter of Mendez, 21 I&N Dec. 296, 301 (BIA 1996). 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 adverse factor in the present case is the applicant's material misrepresentations to obtain admission into the United States, for which he now seeks a waiver. The mitigating factors include the applicant's U.S. citizen spouse and lawful permanent resident daughter, the extreme hardship to his spouse if his waiver application is denied, the length of time the applicant has remained outside the United States, letters attesting to the applicant's good character, and the applicant's lack of criminal history.

The AAO finds that the immigration violation committed by the applicant is serious in nature and cannot be condoned. Nevertheless, when taken together, the mitigating factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the waiver application is approved.

ORDER: The motion is granted and the waiver application is approved.