



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JAN 14 2013

Office: NEW YORK, NY

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 request 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,

*[Signature]*  
for  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 having procured 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 remain in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to her qualifying spouse and denied the application accordingly. *See Decision of Field Office Director*, dated June 3, 2011. The Field Office Director also found that the applicant had failed to show that she merited a positive exercise of discretion. *Id.*

On appeal, counsel for the applicant asserts that the Field Office Director failed to consider certain hardship factors. Counsel states that those factors include the applicant's long residence in the United States, her marriage to a U.S. citizen, her other family ties in the United States, the fact that her sons will soon arrive in this country as lawful permanent residents, her role in the church in which the qualifying spouse is a pastor, and her lack of a criminal history. *Counsel's Brief.*

The record includes, but is not limited to: a statement from the qualifying spouse; a letter of recommendation from a bishop at the applicant's church; medical records relating to the qualifying spouse; and financial records. 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) 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.

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.

In the present case, the record reflects that the applicant entered the United States on December 18, 1984 by presenting a passport and nonimmigrant visa which bore her photograph but the name of another individual. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. She does not contest this finding of inadmissibility on appeal. She is eligible to apply for a waiver under section 212(i) of the Act as the spouse of a U.S. citizen.

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 herself can only be considered insofar as it causes extreme hardship to her qualifying spouse. 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 Appeals (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 U.S. 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 v. INS*, 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.

In his statement, the qualifying spouse indicates that the applicant plays an important role in the church in which he is a pastor. He states that the applicant has developed strong ties with the congregation and the community through her volunteer work with the church. He claims that it would be difficult for him to find someone else to take over the qualifying spouse’s responsibilities at the church on a volunteer basis and that he would be unable to hire someone. He also states that he relies on the qualifying spouse for emotional support so that he can focus on his role as a pastor. He also states that the applicant assists him in controlling his medical conditions, which include chronic laryngitis, acid reflux, and panic attacks. He also asserts that the qualifying spouse has close ties with her family in the United States, including her aunt and uncle and her sister. Finally, the qualifying spouse indicates that the removal of the applicant would interrupt their stable marriage.

The AAO finds that the applicant has failed to demonstrate that her qualifying spouse would suffer extreme hardship upon separation from the applicant if the waiver application is denied. Although the applicant performs helpful volunteer work at the church, there is insufficient evidence to establish that the loss of her assistance would cause extreme hardship for the qualifying spouse. There is no indication that he would be unable to continue his work or to support himself financially in her absence. Additionally, while the qualifying spouse contends

that the applicant assists him in managing his illnesses, there is no indication that his laryngitis or acid reflux restrict his ability to work, care for himself, or carry out his other responsibilities. Although the qualifying spouse also claims that he suffers from panic attacks, there is no evidence in the record to support that claim. Finally, while the qualifying spouse states that separation from the applicant would disrupt his marriage and deprive him of the applicant's emotional support, this is a common result of inadmissibility or removal which typically does not reach the level of extreme hardship necessary for a waiver. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568 (BIA 1999).

The applicant has also failed to demonstrate that her qualifying spouse would suffer extreme hardship upon relocation to Jamaica. The qualifying spouse has not claimed that he would be unable to relocate and there is no evidence in the record to support such a finding.

Although counsel also addresses hardship the applicant would suffer if she were removed, hardship to her can only be considered to the extent that it would cause hardship to her qualifying spouse. There is no indication that the applicant's separation from her family in the United States or her need to readjust to life in Jamaica after a long period of residence here would cause extreme hardship to the qualifying spouse.

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 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.