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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: **JAN 31 2013** Office: **KINGSTON, JAMAICA**

FILE: [REDACTED]

IN RE: Applicant: [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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Kingston, Jamaica, 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 attempting to procure admission to the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is the daughter of a lawful permanent resident of the United States and is the mother of a U.S. citizen daughter. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 her father and daughter.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 7, 2012.

On appeal, the applicant, through counsel, asserts that the Field Office Director used a higher standard of hardship than required by the regulations. *Form I-290B, Notice of Appeal or Motion*, dated June 4, 2012. The AAO notes that the cases cited by the Field Office Director may have involved forms of relief other than a waiver of inadmissibility under section 212(i) of the Act; however, reliance on such cases has been found to be helpful for the insight they provide concerning the definition of "extreme hardship." *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). Similarly, while the facts of the instant case are different from the facts of the waiver cases cited by the Field Office Director, those cases are also useful in setting out the factors relevant to a finding of extreme hardship.

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant's father and daughter, medical documents for the applicant's father, and documents pertaining to the applicant's expedited removal. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (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.

....

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

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

- (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 immigrant 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 first 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 or her daughter can be considered only insofar as it results in hardship to a qualifying relative. The applicant's father 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 United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Moralez*, 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 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 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 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 the present case, the record indicates that on June 30, 2003, the applicant attempted to enter the United States by presenting her passport and a fraudulent B-1/B-2 nonimmigrant visa. She was expeditiously removed the same day. Based on the applicant’s misrepresentation, the AAO finds that she is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not dispute this finding.

The record contains references to hardship the applicant’s daughter would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s child as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s father is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant’s daughter will not be separately considered, except as it may affect the applicant’s father.

In his statement dated September 4, 2011, the applicant’s father claims that he has been a lawful permanent resident since 2003 and cannot travel to Jamaica because of his medical conditions. Medical documents in the record establish that the applicant’s father has end stage renal disease, acute kidney failure, and gout; he receives dialysis three times a week; resides in a nursing home; and requires 24-hour nursing care and supervision. These documents also indicate that the onset of his conditions occurred in 2008 and that he was readmitted to a rehabilitation nursing center in 2010. Additionally, documents establish the applicant’s father has three children residing in the United States.

The AAO acknowledges that the applicant’s father is a lawful permanent resident of the United States and that relocation abroad would involve some hardship. However, the applicant’s father is a native of Jamaica, and no evidence has been submitted showing that he is unfamiliar with the customs and cultures in Jamaica or that he has no family ties there. Regarding the medical hardship to the applicant’s father, no documentary evidence was submitted establishing that he cannot receive treatment for his medical conditions in Jamaica

or that he has to remain in the United States to receive treatment. Going on record without supporting evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that her father would suffer extreme hardship if he relocated to Jamaica.

Concerning the applicant's father's hardship in the United States, he states all of his children, except the applicant, reside in the United States, and he would like her to live with him in the United States. He misses the support the applicant would give him, and he is depressed about the possibility of not seeing her again. In his appeal brief dated June 27, 2012, counsel states the applicant's father needs the applicant's care in his advanced age. Medical documents establish the applicant's father resides in a 24-hour nursing facility. Counsel claims that having the applicant's presence in the United States would help her father's "state of mind." Additionally, in her statement dated August 16, 2011, the applicant's daughter states she needs the applicant's support for when she gets pregnant and in helping to take care of her future child.

The AAO acknowledges that the applicant's father may be suffering emotional difficulties in being separated from the applicant. While it is understood that the separation of loved ones often results in significant psychological challenges, the applicant has not distinguished her father's emotional hardship upon separation from that which is typically faced by the loved ones of those deemed inadmissible. With respect to the applicant's father's medical hardship, although the record establishes that he suffers from serious medical issues, the medical documentation in the record does not establish that separation from the applicant has elevated his symptoms or that he requires the applicant's assistance. Additionally, the AAO also notes that the applicant's daughter may be suffering hardship in being separated from her mother; however, the applicant has not shown that her daughter's hardship has elevated her father's challenges to an extreme level. Based on the record before it, the AAO finds that the applicant has failed to establish that her father would suffer extreme hardship if her waiver application is denied and he remains in the United States.

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 lawful permanent resident father as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether she 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. See 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.