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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: JUL 02 2013 OFFICE: NEW YORK, NEW YORK

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:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York, and was dismissed by the Administrative Appeals Office (AAO) on appeal. The matter is now before the AAO on motion. The motion will be granted, and the underlying application will be approved.

The applicant is a native and citizen of Jamaica who has resided in the United States since October 2, 1998 when he was admitted pursuant to a nonimmigrant visa. He was later 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 attempted to procure a visa, other documentation, admission to the United States, or another benefit provided under the Act 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 his U.S. Citizen spouse.

The District Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of District Director* dated April 21, 2012. The AAO found although the applicant established his spouse would experience extreme hardship upon separation, the applicant failed to demonstrate she would suffer such hardship upon relocation to Jamaica and dismissed the appeal. *See Decision of AAO*, February 1, 2013.

On motion, counsel submits statements from the applicant and his spouse, letters from family and friends, articles on country conditions in Jamaica, and a death certificate. In the statement, the applicant's spouse contends she would experience financial and medical hardship in Jamaica. She explains she would not be able to find employment there, and she would not be eligible to receive her supplemental social security benefits if she left the United States. The spouse adds that her father died of COPD in Jamaica, and she fears she would also suffer the same fate because she has also been diagnosed with COPD. In an earlier brief, counsel discusses the hardship the spouse would suffer in Jamaica given her lack of ties there.

The record includes, but is not limited to, the documents listed above, letters from the spouse's physicians, documentation related to a foreclosure, evidence on the applicant's driver's license, other statements from the applicant and his spouse, financial and medical records, documentation on the applicant's admission, other applications and petitions, evidence of birth, marriage, divorce, and citizenship, and photographs. The entire record was reviewed and considered in rendering a 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.

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 obtained passport stamps indicating he re-entered Jamaica on October 6, 1998 and on October 16, 1999, when he claimed that he had never left the United States since his October 2, 1998 admission. The applicant admitted he obtained the stamps to falsely show he did not remain in the United States past his date of authorized stay. Inadmissibility is not contested on motion. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure a visa, other documentation, admission to the United States, or a benefit under the Act through fraud or misrepresentation. The applicant's qualifying relative is her U.S. Citizen spouse.

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. 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 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. I.N.S.*, 138 F.3d 1292 (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.

On appeal, the AAO found the applicant submitted sufficient evidence demonstrating his spouse would experience extreme hardship upon separation from the applicant. There is no documentation of record indicating this finding should be disturbed. The AAO therefore affirms the applicant established his spouse would experience extreme hardship upon separation.

The spouse claims neither she nor the applicant would be able to find employment in Jamaica. She adds that her income would be decreased, because she would not be able to receive her supplemental social security benefits if she lived outside the United States. Documentation on country conditions in Jamaica is submitted in support of the motion. The spouse adds that her medical difficulties will be exacerbated by this loss of income, given her documented chronic obstructive pulmonary disease (COPD), hypertension, and pleurisy. She indicates her medical

expenses, along with the cost of housing, food, and other living expenses given her drastically reduced income will create hardship above and beyond what is normally experienced. The applicant states that he is concerned because his spouse's father died in Jamaica of COPD because he was unable to afford proper medical care. He claims there is no doubt that his spouse will suffer the same fate if she relocated. A death certificate for [REDACTED] is submitted on motion. Letters from the spouse's siblings are also submitted. Therein, the siblings, who reside in Kingston, Jamaica, indicate that Jamaica has changed since the spouse resided there. They explain that medical attention is very costly, there are very few job opportunities, and the cost of living is very high. The siblings moreover state that their father died of COPD because he could not afford proper medical care, and that their other sister passed away in 2012 from kidney failure and other complications.

The applicant has shown that his spouse will experience financial and medical difficulties upon relocation to Jamaica. The record reflects that his spouse, who is 63 years old, is receiving supplemental social security income as well as disability benefits. As supplemental social security income is not available to recipients who relocate outside the United States, the applicant's spouse would lose this income, and, based on evidence of record, it is not likely that she would find adequate employment in Jamaica to replace this income and pay for her living expenses. Furthermore, the record indicates that the spouse's father passed away in 1995, and his death certificate reflects that the disease or condition directly leading to his death was his COPD as well as his hypertension. Moreover, the spouse's three siblings attest that their father was unable to afford the high cost of doctors and hospital care. Their claims that medical care is unaffordable and also insufficient for the spouse's condition is substantiated by the U.S. Department of State's Country Specific Information report on Jamaica, which indicates that medical care is much more limited in Jamaica than in the United States, and serious medical problems can cost \$15,000 to \$20,000 or more. *Country Specific Information: Jamaica, U.S. Department of State, January 8, 2013.* Given the evidence of record on the spouse's father's COPD and death, his inability to pay for adequate medical care, and documentation on medical care in Jamaica, the applicant's contention that his spouse would suffer the same consequences upon relocation is supported by evidence of record.

In light of the evidence of record, the AAO finds the applicant has established that his spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Jamaica.

Considered in the aggregate, the applicant has established that the applicant's spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 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.

The negative factors include the applicant's misrepresentation, some evidence of his employment without authorization in the United States, as well as his time spent in the United States without lawful status. The positive factors include the extreme hardship to his U.S. citizen spouse, evidence of payment of U.S. income taxes, as well as his lack of a criminal record.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden. The motion is granted, and the underlying application is approved.

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