



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: JUN 21 2013 OFFICE: PORT AU PRINCE, HAITI

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B), and under Section 212(i) of the 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 that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Port Au Prince, Haiti, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Haiti who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. He was also 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 admission to the United States through fraud or misrepresentation. The applicant was additionally found to be inadmissible pursuant to section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i). The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child.

The Field Office 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 Field Office Director* dated May 23, 2012.

On appeal, the applicant's spouse submits a statement in support, her naturalization certificate, an attestation from the applicant, a birth certificate, passport copies, medical records, financial documents, and a letter from the spouse's church. In the statement, the spouse contends she will experience emotional, family-related, financial, and medical hardship without the applicant present. She further asserts she cannot return to Haiti for financial, insecurity, and health reasons.

The record includes, but is not limited to, the documents listed above, statements from the applicant and his spouse, other applications and petitions, documentation of removal proceedings, and evidence of birth, marriage, divorce, residence, and citizenship. 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 on June 7, 2002, the applicant presented a fraudulent visa to immigration officials to procure admission into the United States. In a sworn statement, the applicant admitted he did not obtain the visa from a United States consulate, and that someone made the visa for him. *Sworn statement, June 7, 2002.* Inadmissibility due to fraud or misrepresentation is not contested on appeal. The AAO therefore finds the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

(iii) Exceptions.-

....

(II) Asylees.-No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

....

(v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 Attorney General that the refusal of

admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant was issued a Notice to Appear on June 14, 2002, and he subsequently filed a Form I-589, Application for Asylum and Withholding of Removal, on June 16, 2003. An immigration judge denied his application and ordered him removed on November 16, 2004. The Board of Immigration Appeals affirmed the immigration judge's decision without opinion on March 22, 2006. The applicant was granted temporary protected status (TPS) from April 9, 2010 to July 22, 2011. He departed the United States in 2012, and appeared for an immigrant visa interview in Haiti on February 17, 2012. The record therefore reflects that the applicant accrued unlawful presence from his attempted admission until he filed his asylum application, from November 16, 2004, until he was granted TPS in 2010, and from the expiration of his TPS until his departure in 2012. The applicant accrued more than one year of unlawful presence, and is therefore inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant's qualifying relative for a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act is his U.S. citizen spouse.

The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

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.

The applicant’s spouse describes the emotional, family-related, medical, and financial hardship she will suffer given the continued separation between herself and the applicant. She states she has a young daughter with the applicant, both of them are very attached to the applicant, and they need him in their lives. The spouse adds that the separation has also caused financial hardship because the income from her part-time employment has been insufficient to meet her financial needs. A letter from the spouse’s church is submitted in support, indicating that the church has agreed to help the spouse and her family in all their basic needs such as rent, utilities, food, transportation, clothes, etc. Bank statements and documentation of two money transfers are also submitted on appeal. In an earlier statement, the spouse asserts she cannot meet her financial obligations, including her mortgage payment, her student loan payments, and daycare, without the applicant’s financial assistance. Documentation of mortgage and rental payments is present in the record. She further explains that she is currently in nursing school, and the school does not allow her to work full-time. A letter from the nursing school is present in the record. Therein, a representative reports that the

spouse is enrolled in the school full-time, and her monthly payment is \$215.57. The spouse moreover contends that her health has not been good, and she needs the applicant present in case something happens to her. Medical records from 2010 are submitted in support. The spouse further asserts that she worries about the applicant's safety in Haiti because there was a kidnapping attempt made against him. The applicant submits an attestation, filed with the national police of Haiti on May 21, 2012. Therein, the applicant claims in April 2012 he was a victim of physical aggressive kidnapping on two occasions by individuals riding a motorcycle.

The applicant's spouse contends that she and her child cannot return to Haiti due to financial, insecurity, and health reasons. Official U.S. government reports regarding safety and security issues substantiate this claim. On October 1, 2012, the Secretary, Department of Homeland Security addressed the emergency situation by re-designating Haiti for Temporary Protected Status (TPS) for an additional 18 months, from January 23, 2013 through July 22, 2014. The Department of State (DOS) travel warning for Haiti urges U.S. citizens to exercise caution when visiting Haiti. While thousands of U.S. citizens safely visit Haiti each year, the warning notes that the poor state of Haiti's emergency response network should be carefully considered when planning travel. Haiti's infrastructure remains in poor condition and unable to fully support even normal activity, much less crisis situations. The warning further notes that U.S. citizens have been victims of violent crime, including murder and kidnapping, predominantly in the Port-au-Prince area. While incidents of cholera have declined significantly, cholera persists in many areas of Haiti. *Haiti—Travel Warning*, DOS, December 28, 2012

Based on the designation of TPS for Haiti, the disastrous conditions created by the 2010 earthquake, the subsequent cholera outbreak, the already unstable environment, and the fact that the applicant has been the victim of an attack, the AAO finds that the cumulative effect of moving to Haiti would go beyond the usual or typical results of removal or inadmissibility. The AAO thus concludes that, were the applicant unable to reside in the United States due to his inadmissibility, the record shows that his spouse would experience extreme hardship by relocating abroad.

The spouse contends she experiences poor health, and that she needs the applicant present in case something happens to her. In support of these assertions the applicant submitted copies of medical records for the applicant's spouse. The records consist of a medical history and discharge notes from 2010. Significant conditions of health are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that the applicant's wife suffers from such a condition. The documents submitted were prepared for review by medical professionals and do not contain a clear explanation of the current medical condition of the applicant's spouse. Absent an explanation in plain language from the treating physician of the exact 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 medical condition or the treatment needed.

The applicant has, however, submitted sufficient evidence of financial and emotional hardship to his spouse given continued separation. Although the record does not contain documentation of income or household expenses for the spouse's current residence, the applicant has demonstrated that his

spouse was evaluated for and is receiving financial assistance from her church. In addition to this financial hardship, the applicant has shown that his spouse experiences some emotional difficulties given the current separation from the applicant, as well as the impact it has on their child. The record additionally reflects that the applicant was targeted for criminal activity in Haiti, which adds to the emotional hardship his spouse suffers upon separation.

The AAO therefore finds there is sufficient evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record establishes that the financial, emotional, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that she would suffer extreme hardship if the waiver application is denied and the applicant remains in Haiti without his spouse.

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 favorable factors include the extreme hardship that the applicant's spouse and child are experiencing and his lack of a criminal record. The unfavorable factors include his attempt to enter the United States through fraud, periods of unlawful presence and his failure to depart after a final order of removal.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors.

The AAO notes that the Field Office Director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. The Form I-212 was denied solely based on the denial of the Form I-601. A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. The AAO has found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated in that finding, the AAO finds that the applicant's Form I-212 should also be granted as a matter of discretion.

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 and the appeal will be sustained.

ORDER: The appeal is sustained.