

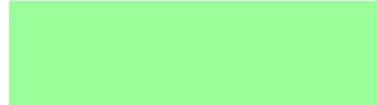


**U.S. Citizenship
and Immigration
Services**

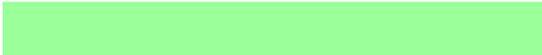
(b)(6)



DATE: JUN 25 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:

SELF-REPRESENTED

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

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 Field Office Director found the applicant to be additionally inadmissible under section 212(a)(2)(D)(i) of the Act, 8 U.S.C. § 1182(a)(2)(D)(i), for having procured a prostitute. The applicant was lastly found to be inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), as he has a final order of removal and was removed from the United States on July 2, 2008. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant failed to establish his qualifying relative would experience extreme hardship given his inadmissibility and denied the Form I-601 waiver application accordingly. *See Decision of Field Office Director* dated May 22, 2012. The Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, was denied in the same decision as a matter of discretion. *Id.*

On appeal, the applicant submits a brief, a psychological evaluation, a statement from the applicant's spouse, financial and medical records, and a letter.¹ In the brief, the applicant contests inadmissibility under section 212(a)(2)(D)(i) of the Act, asserting that the record does not contain evidence of a conviction, and that in any event the applicant's activities do not constitute procuring prostitution. The applicant contends his spouse would be subject to extremely poor country conditions in Haiti. The applicant additionally asserts that his spouse would experience emotional, financial, and medical hardship given continued separation.

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 criminal and removal proceedings, evidence of birth, marriage, residence, and citizenship, and financial documents. 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:

¹ The AAO notes that V [REDACTED] submitted a brief and additional evidence to USCIS on October 5, 2012. However, the record does not contain a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, indicating [REDACTED] is authorized to represent the applicant on appeal. As such, the applicant will be considered to be self-represented, and [REDACTED] will not receive a copy of this decision, though his submissions have been considered in adjudicating the appeal.

(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 July 23, 2003 the applicant presented a photo-substituted passport and nonimmigrant visa bearing the name [REDACTED] in an attempt to procure admission into the United States. The applicant admitted in a sworn statement that the passport and visa did not belong to him. Inadmissibility due to 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.

After he attempted to procure admission using a photo-substituted passport and visa which did not belong to him, the applicant was issued a Form I-862, Notice to Appear, on July 29, 2003. The applicant filed a Form I-589, Application for Asylum and Withholding of Removal before an immigration judge on September 11, 2003. The immigration judge denied the asylum application and ordered him removed on November 23, 2004. A subsequent appeal was dismissed by the Board of Immigration Appeals (BIA) on April 7, 2006. The applicant was removed to Haiti at government expense on July 2, 2008. The applicant therefore accrued unlawful presence from the date the BIA dismissed his appeal until his departure from the United States. The AAO consequently finds the applicant accrued more than one year of unlawful presence and is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant's qualifying relative for a waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act is his U.S. citizen spouse.

The Field Office Director additionally found the applicant to be inadmissible under section 212(a)(2)(D) of the Act. Section 212(a)(2) of the Act states, in pertinent part:

(D) Prostitution and commercialized vice

Any alien who—

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or

adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or

(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution,

is inadmissible.

The record reflects that the applicant was arrested on May 13, 2008 and charged with solicitation of prostitution under Florida statute §796.07(2)(e). The record is unclear on whether the applicant was convicted for this offense. The AAO notes, however, that if the applicant did have a conviction pursuant to this charge, in addition to possible inadmissibility under section 212(a)(2)(D)(ii) of the Act, he may also be inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of committing a crime involving moral turpitude. Because the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not review the determination of the applicant's inadmissibility under section 212(a)(2)(A)(i)(I).

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 contends she experiences financial, medical, and psychological hardship without the applicant present. She explains that due to legal fees, remittances to the applicant, and other expenses she is barely able to meet her financial obligations. Evidence of income and expenses, as well as documentation of overdue bills is submitted in support. The spouse adds in an earlier statement that she has lost her car twice, she has had to quit her nursing school, and she has been evicted from her apartment several times. Documentation on the applicant’s Honda Accord is present in the record. The spouse additionally claims that she has been suffering from migraines and severe allergies as a result of stress. Medical records are submitted in support. A licensed clinical social worker opines in a psychological evaluation that the spouse has an adjustment disorder with depressive mood, and that she runs the risk of developing a major depressive episode. The spouse indicates that she would like to start a family with the applicant, but she cannot given the present separation. She adds that, given the country conditions in Haiti, she worries constantly about the applicant’s safety.

The applicant contends in a brief that country conditions in Haiti remain so adverse that temporary protected status (TPS) has been extended. The applicant states that relocating to such a country would negatively impact the spouse given her emotional, physical, and financial difficulties.

The spouse claims she suffers from severe migraines and allergies, which have also adversely affected her psychological well-being. In support of these assertions the applicant submitted copies of medical records for the applicant's spouse. The records consist of laboratory results from 2010 to 2012. 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 spouse 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. Furthermore, the AAO cannot determine the impact these purported medical difficulties have on the applicant's emotional and psychological conditions.

The applicant has submitted sufficient evidence demonstrating that his spouse experiences financial difficulties without him present. The record contains documentation of overdue bills and car repossession, as well as evidence of student loan and credit card debt. Furthermore, although the applicant has not submitted documentation on his spouse's household bills except for monthly rent expenses, the record reflects that the spouse's income is not sufficient for the expenses she has documented. Given this evidence of record, the AAO finds the applicant's spouse experiences financial hardship without the applicant present.

In addition to financial difficulties, the spouse's contentions with respect to her psychological hardship are also substantiated by documentation of record. The record reflects that the spouse experiences some emotional hardship given the present separation from the applicant, which is compounded by worry over the applicant's safety and security in Haiti. 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, psychological / 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.

Official U.S. government reports regarding safety and security issues substantiate the applicant's claims on adverse country conditions in Haiti. 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 spouse's emotional and financial difficulties, 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.

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-Moralez*, 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 unfavorable factors include the applicant's misrepresentation in 2003, the accrual of unlawful presence, evidence of the applicant's unlawful employment in the United States, and his removal at government expense. The favorable factors include the extreme hardship to the applicant's spouse, his lack of criminal convictions, as well as evidence of the applicant's good moral character as stated in the psychological evaluation.

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. As the AAO has now found the applicant eligible for a waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, it will withdraw the Field Office Director's decision on the Form I-212 and render a new decision.

Section 212(a)(9)(A) of the Act states:

Aliens previously removed.-

(A) Certain aliens previously removed.-

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

On April 7, 2006 the applicant's November 23, 2004 order of removal by an immigration judge was affirmed by the BIA. He was removed from the United States on July 2, 2008. As such, the applicant is inadmissible under section 212(a)(9)(A)(i) of the Act until July 2, 2013 and must request permission to reapply for admission.

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.