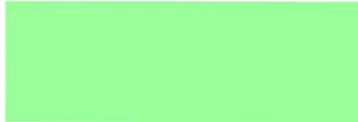




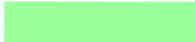
U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **JUN 26 2013**

Office: NEW YORK

FILE: 

IN RE: Applicant: 

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.

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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, New York, New York. The matter 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 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 claiming she procured admission to the United States through fraud or misrepresentation. The record reflects that the applicant is married to a U.S. citizen and is the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen husband.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated September 15, 2012.

On appeal, counsel for the applicant contends that USCIS failed to give sufficient weight to the evidence of extreme hardship that the applicant's spouse would suffer if the applicant's waiver application is not approved.

The record contains the following documentation: a statement from the applicant's attorney on the Form I-290B, Notice of Appeal or Motion; a letter from the applicant's husband; a psychological evaluation for the applicant's husband; a medical statement regarding the applicant's spouse's psychological condition; financial documentation; and letters of reference in support of the applicant. 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, in pertinent part:

The Attorney General [now the Secretary of Homeland Security (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.

A waiver of inadmissibility under section 212(i) of the Act is dependent 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. The applicant's U.S. citizen husband is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be "qualifying relatives." However, although children are not qualifying relatives under the statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The record reflects that during her interview to adjust to lawful permanent resident status, the applicant claimed that she entered the United States on November 14, 2001, using a passport and visa belonging to [REDACTED]. There is no record of the applicant having been lawfully admitted into the United States, and the District Director concluded that the visa the applicant presented at her interview was counterfeit. The applicant is inadmissible because she willfully misrepresented a material fact through the use of false identity documents to try to procure entry into the United States and she made false statements about her manner of entry to an immigration officer. The applicant does not contest her inadmissibility.

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*, 138 F.3d at 1293 (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 states that he will suffer from psychological hardship if the applicant’s waiver application is not approved. The applicant’s spouse states prior to meeting the applicant, he had two daughters with two different women, then fell into depression and starting drinking alcohol to deal with his problems. The applicant’s spouse further states that he was on a path of self-destruction until he met the applicant, who he has known for over seven years. The applicant and her spouse were married in 2008.

In support of the applicant’s spouse’s claim that he suffers from psychological problems, the record includes a letter from a psychologist dated July 27, 2012, which indicates that the applicant’s spouse is currently suffering from major depressive disorder – recurrent episode and that he has also experienced “Alcohol Intoxication, by History” [sic].

On appeal, the applicant submits a letter from [REDACTED] dated October 8, 2012, which states that the applicant’s spouse has been his patient since June 2010, that the applicant’s spouse was diagnosed with depression one year prior to the letter, and that his depression has worsened since August 2012. However, the record contains no further details about his condition and any treatment that may be required. The evidence on the record is insufficient to conclude that the emotional problems that the applicant’s spouse is experiencing are resulting in hardship beyond the common results of removal or inadmissibility.

Financial documentation in the record indicates that, according to the applicant's spouse's 2011 federal income tax return, his 2011 adjusted gross income was \$71,710. The evidence in the record is insufficient to conclude that the qualifying spouse would be unable to meet his financial obligations in the applicant's absence or that he would suffer financial hardship if the applicant's waiver application is not approved.

Although the AAO is sympathetic to the family's circumstances and recognizes that the input of any health professional is respected and valuable, the record does not show that the applicant's spouse's hardship and the symptoms he has experienced are extreme compared to others separated from a spouse. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's spouse is facing, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

The AAO notes that the applicant's spouse does not make any claims regarding his ability to relocate to Jamaica, other than his statement that he has resided in the United States since 1983 and has spent most of his adult life here. The AAO notes that the applicant's spouse was born in Jamaica and presumably thus is familiar with the language and customs of Jamaica. Statements in the record indicate that the applicant's spouse has two daughters from prior relationships; however, there is no evidence in the record regarding the custody arrangements for his daughters and no indication of the relationship that the applicant's spouse has with them. Based on the evidence in the record, the applicant has not established that her spouse would suffer hardship beyond the common results of removal if he were to relocate to Jamaica to reside with her.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship he would face rises to the level of extreme as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility, 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. The waiver application is denied.