



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

(b)(6)



Date: **APR 07 2014** Office: NEBRASKA SERVICE CENTER 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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center, and 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 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 procured a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. The applicant does not contest this finding of inadmissibility. Rather, she 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 U.S. citizen spouse.

The 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 Director*, dated September 12, 2013.

In support of the appeal, the applicant's spouse submits the following: a letter and affidavit from the applicant's spouse; an affidavit from the applicant's mother-in-law; biographic documents pertaining to the applicant's spouse; financial documentation pertaining to the applicant's spouse; and medical records for the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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 Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (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 Attorney General (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...

With respect to the director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, the record establishes that the applicant misrepresented her marital status when she applied for a B Visa in December 2007. Specifically, the applicant claimed that she was single and living with her fiancé in Jamaica when in fact she was married and her husband was living in the United States as a lawful permanent resident. By stating

that she was single and living with her fiancé in Jamaica when applying for a nonimmigrant visa in December 2007, the applicant led the American Embassy in Kingston, Jamaica to believe that she had close family ties, namely, her future husband, in her home country. By failing to disclose that she was married to a lawful permanent resident who was living in the United States, she cut off a line of inquiry which was relevant to the applicant's request for a visitor visa. As such, the AAO concurs with the director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation.

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 spouse is the only qualifying relative in this case. Hardship to the applicant or the children can be considered only insofar as it results in hardship to a qualifying relative. 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).

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, 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.

The applicant’s U.S. citizen spouse contends that he will suffer emotional, medical and financial hardship were he to remain in the United States while the applicant resides abroad due to her inadmissibility. In a declaration, the applicant’s spouse explains that he is suffering from Crohn’s disease and because of the symptoms of the disease and lack of help from his wife, he is suffering tremendously. He explains that as a result of his medical condition, he is unable to work and financially provide for himself and his two children. Furthermore, the applicant’s spouse details that his children miss their mother very much. Finally, the applicant’s spouse maintains that his wife is not able to assist them financially with the job she currently holds in Jamaica. *See Letter form* [redacted] dated September 20, 2013. In a separate statement, the applicant’s spouse states that the disability support he receives is not sufficient to make ends meet. He further states that his family members have pitched in to assist him with his and his children’s care but they have become overburdened. *See General Affidavit from* [redacted] dated September 23, 2013.

With respect to the emotional hardship referenced, while the AAO acknowledges the applicant’s spouse’s contention that he will experience emotional hardship were he to remain in the United States while his wife resides abroad, the record does not establish the severity of this hardship or the effects on his daily life. As for his medical condition, no documentation has been provided on appeal from his treating physician establishing his current conditions, the severity of the situation, the short and long-term treatment plan and what specific hardships he is experiencing as a result of his wife’s absence. The record evidences that the applicant’s spouse lives with his mother and she has been playing an integral role in his and his children’s daily care and well-being. *See General*

Affidavit from [REDACTED] dated September 24, 2013. As for the applicant's children, it has not been established that they would be unable to relocate to Jamaica to reside with their mother, thereby ameliorating the hardships referenced by the applicant's spouse in his letter and affidavit. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As for the financial hardship referenced, while the applicant's spouse has submitted documentation establishing a financial aid award package offered to him in August 2013 and disability pay stubs from August and September 2013, he has not provided documentation on appeal establishing his and his wife's complete financial picture, including income and expenses and assets and liabilities, to support the assertion that without the applicant's physical presence in the United States, he will suffer financial hardship. The record does not establish that the applicant has ever played a role in her husband's finances. Nor has any documentation been provided establishing that the applicant's spouse is unable to afford to visit his wife in Jamaica.

The AAO recognizes that the applicant's spouse will endure hardship as a result of a long-term 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 record fails to establish that the applicant's spouse's emotional, medical and financial survival directly correlate to the applicant's physical presence in the United States. The AAO concludes that based on the evidence provided, it has not been established that the applicant's U.S. citizen spouse will experience extreme hardship were he to remain in the United States while the applicant resides abroad due to her inadmissibility.

With respect to relocating abroad to reside with the applicant due to her inadmissibility, on appeal the applicant's spouse asserts that he will experience hardship because he would not get the necessary medical attention he needs in Jamaica. Further, he asserts that it will not be healthy to uproot his children from family, friends, school and opportunities available to them here in the United States. *Supra* at 1. As noted above, assertions without supporting documentation do not suffice to establish extreme hardship. The applicant has failed to establish that her U.S. citizen spouse would experience extreme hardship were he to relocate to Jamaica, his native country, to reside with the applicant due to her inadmissibility.

The record, reviewed in its entirety, does not support a finding that the applicant's 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 is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships he would face rise to the level of "extreme" as contemplated by statute and case law.

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NON-PRECEDENT DECISION

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Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.