U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: FEB 21 2014 Office: OAKLAND PARK, FL

IN RE:

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 (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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Oakland Park, Florida. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion is granted, the prior AAO decision will be withdrawn and the underlying appeal will be sustained.

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 procuring admission to the United States by fraud or willful misrepresentation of a material fact. The applicant's spouse is a U.S. citizen, his son is a lawful permanent resident and he seeks a waiver of inadmissibility in order to reside in the United States.

The Acting Field Office Director found that the applicant is inadmissible under section 212(a)(2)(C) of the Act, based on reasons to believe the applicant was involved in drug trafficking, and because there is no waiver for inadmissibility under this section of the Act, she denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting Field Office Director*, dated June 3, 2011. The AAO found that the applicant is not inadmissible under section 212(a)(2)(C) of the Act; he is inadmissible under section 212(a)(6)(C)(i) of the Act; he failed to establish that his spouse would experience extreme hardship, specifically if she relocated with him to Jamaica; and the AAO dismissed the appeal accordingly. *Decision of the AAO*, dated March 8, 2013.

On motion, counsel asserts that the applicant's spouse would suffer extreme hardship if she relocated to Jamaica. *Form I-290B, Notice of Appeal or Motion (Form I-290B),* filed April 5, 2013.

The record includes, but is not limited to, counsel's brief, a psychological evaluation of the applicant's spouse, a physician's letter, the applicant's criminal records and country-conditions information about Jamaica. The entire record was reviewed and considered in rendering a decision on the appeal.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Because the applicant provides new evidence related to new facts, the requirements of a motion to reopen have been met. The requirements of a motion to reconsider have not been met.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (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 that:

> (1) 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.

The record reflects that the applicant presented a passport with a false name when entering the United States in 1993. As such, he is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States by willful misrepresentation of a material fact. The applicant does not contest his inadmissibility.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bars imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his child is not considered in section 212(i) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. 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-Moralez,* 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*, 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.

As the AAO has already found that the applicant's spouse would experience extreme hardship if she remained in the United States without him, it will only address the applicant's claims related to hardship his spouse would experience upon relocating to Jamaica.

Counsel states that the applicant's spouse has significant ties to the United States; all of her family, including her son, is in the United States. The earlier of two psychological evaluations in the record reflects that the applicant's spouse has an adult son and three siblings in the United States. The record reflects that the applicant's spouse became a U.S. citizen in 1978.

The psychologist who evaluated the applicant's spouse states that she is completely acculturated as an American; she has only one aging relative in Jamaica who she met once, as an adult; and in Jamaica her depression would be exacerbated to the point that her reaction may be suicide.

Counsel, moreover, states that the applicant's spouse would lose her medical health coverage if she relocates to Jamaica. His assertion is supported by the record, which includes a copy of her medical insurance documents. The applicant's spouse's physician states that she suffers from high blood pressure, asthma, high cholesterol and is borderline diabetic. Her psychologist cites to medical articles to support assertions that her depression negatively affects her physical functioning in general and her cardiovascular functioning (i.e., high blood pressure and high cholesterol) in particular. The record additionally includes U.S. Department of State information stating that comprehensive emergency medical services are located only in Kingston and Montego Bay, medical care is more limited than in the United States, and doctors and hospitals often require cash payment before providing services.

Counsel states that the applicant's spouse has been employed by the same company for the past decade; she faces the high possibility of not being able to work in Jamaica; and the failing Jamaican economy would not provide her with secure employment or the benefits she currently receives. The applicant's spouse's employer states that she started working on June 28, 1999 and she is a billing analyst. The record includes information reflecting that in Jamaica the median family income is approximately $6,000 per year; the unemployment rate was 14.2% in 2012, and 16.5% of the population lived below the poverty level in 2012.

The record reflects that the applicant's spouse, age 56, has family ties in the United States, her son and three siblings, and she does not have family ties, other than one relative, in Jamaica. She has resided in the United States for a lengthy period of time. The record reflects that she would experience significant emotional and psychological hardship if she relocated to Jamaica due to her depression as described by her psychologist. Her psychological hardship, moreover, would adversely affect her physical health. The record reflects that she has medical issues and that medical care is limited in Jamaica. She also has stable employment in the United States, which provides her with medical insurance. Country-conditions information indicates that the economic situation in general in Jamaica is difficult and given the applicant's spouse's age and inexperience with labor conditions there, it is reasonable to conclude that employment opportunities for her would be scarce. In addition, according to a U.S. Department of State report in the record, violent crime is a serious problem in Jamaica that is exacerbated by understaffed and ineffective police. Considering the hardship factors mentioned, and the normal results of relocation, the AAO finds that the applicant has established that his spouse would experience extreme hardship if she relocated to Jamaica.

Considered in the aggregate, the applicant has established that his 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 AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

> We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra,* is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives).

Id. at 301 (citation omitted).

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional

adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors include the applicant's U.S. citizen spouse, extreme hardship to his spouse, his lawful permanent resident son, his filing tax returns, his residence of long duration in the United States, and his lack of a criminal conviction. The unfavorable factors include the applicant's misrepresentation, a protection order filed against the applicant approximately five years ago, his unauthorized employment and his period of unauthorized stay.

The AAO finds that the immigration violations committed by the applicant are serious in nature; nevertheless, when taken together, we find the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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 been met. The motion will be granted and the underlying appeal will be sustained.

ORDER: The motion is granted, the prior AAO decision is withdrawn and the underlying appeal is sustained.