



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: JAN 17 2014

Office: TAMPA

[Redacted]

IN RE: Applicant:

[Redacted]

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:

[Redacted]

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 Field Office Director, Tampa, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native of Haiti 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 attempting to procure admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to reside in the United States with his U.S. citizen spouse and children.

The Field Office 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. *See Decision of the Field Office Director*, October 18, 2012.

On November 19, 2012, the applicant submitted a motion to reopen or reconsider, requesting the Field Office Director to reconsider the denial of the Form I-601. The Field Office Director summarily dismissed the motion on November 22, 2012. *See Decision of the Field Office Director*, November 22, 2012.

On appeal, filed on December 19, 2012 and received by the AAO on July 26, 2013, counsel contends that the Field Office Director erred in summarily dismissing the motion because it cited applicable and relevant precedent decisions and included additional evidence of hardship to the applicant's qualifying relative, specifically, evidence of the birth of the applicant's second child, a psychological report, and additional country-conditions information about Haiti.

The record includes, but is not limited to, the following documentation: briefs filed by the applicant's attorney in support of Form I-601 and Forms I-290B, Notice of Appeal or Motion; a psychological report for the applicant's spouse, financial documentation, an affidavit and letter from the applicant's spouse, and evidence that the applicant has been granted temporary protected status (TPS) in the United States.

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.

The record indicates that the applicant attempted to enter the United States on July 21, 2004, under the visa-waiver program using a photo-substituted French passport belonging to another person. The applicant does not contest his inadmissibility.

Section 212(i) of the Act provides that:

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.

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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse 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 this statute, their hardship may be considered as 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 U.S. Citizenship and Immigration Services then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 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. INS*, 138 F.3d 1292, 1293 (9th Cir. 1993), (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.

Counsel contends that the applicant’s spouse will suffer extreme hardship if the applicant’s waiver application is not approved and she relocates to Haiti to reside with him. In support of this contention, counsel submits copies of a travel warning for Haiti prepared by the U.S. Department of State and news articles about harsh conditions in Haiti since the 2010 earthquake, including information about the cholera epidemic that followed.

The applicant’s spouse, in her affidavit, states that she cannot fathom having to live in Haiti, with no employment prospects, no stable infrastructure, dangerous environmental practices, inadequate health-care facilities, diseases, and uncontrolled violence. She also fears raising their two young children in these conditions. The record reflects that the applicant’s spouse, a Haitian national, was granted asylum in the United States and has lived in the United States for approximately ten years.

The assertions of counsel and the applicant’s spouse are corroborated by country-conditions reports. On August 13, 2013, the State Department updated its travel warning for Haiti with new information regarding crime levels and infrastructure problems. According to the most recent travel warning,

“U.S. citizens have been victims of violent crime, including murder and kidnapping, predominately in the Port-au-Prince area.” Despite the Haitian government’s limited progress in arresting perpetrators last year, “kidnapping for ransom can affect anyone in Haiti, particularly those maintaining long-term residence in the country.” Moreover, although fewer crimes have been reported outside the capital, the warning notes that “authorities’ ability to respond to emergencies is limited and in some areas nonexistent.”

Additionally, the travel warning notes that “Haiti’s infrastructure remains in poor condition and inadequate. Medical facilities, including ambulance services, are particularly weak. Some U.S. citizens . . . have been unable to find necessary medical care in Haiti and have had to arrange and pay for medical evacuation to the United States.” The record also includes an outbreak notice of cholera in Haiti issued by the Centers for Disease Control and Prevention in 2011, and a 2012 newspaper article regarding Haiti’s continuing cholera crisis.

Furthermore, former Department of Homeland Security (DHS) Secretary Janet Napolitano determined that TPS for certain Haitians was warranted because of the earthquake and aftershocks of January 12, 2010, and extended this designation through July 22, 2014. The Secretary’s decision to extend TPS noted that Haiti experienced “extensive damage to infrastructure, public health, agriculture, transportation, and educational facilities” as a result of the earthquake, and over one million Haitians “were left homeless and living in temporary camps.” Political instability has impeded the reconstruction process. Food security continued to be a problem two years after the earthquake. Given the risk of contracting cholera, unsafe living conditions, damaged infrastructure, and the shortage of permanent shelter, the Secretary determined it is unsafe for Haitians currently in the United States with TPS to return to Haiti. *See* Notice of Extension of the Designation of Haiti for Temporary Protected Status, 77 Fed. Reg. 59943 (October 1, 2012).

Considering the evidence of hardship in the aggregate, including the evidence of continuing unstable conditions in Haiti following the 2010 earthquake, which corroborate the applicant’s spouse’s concerns about employment prospects, health care, and security in Haiti, the AAO finds that the applicant’s spouse would experience extreme hardship if she were to relocate to Haiti with the applicant.

Counsel contends that the applicant’s spouse would suffer emotional hardship if she were to be separated from the applicant should the waiver application not be approved. In support of this contention, counsel submits a psychological assessment for the applicant’s spouse, which indicates that she is suffering significant symptoms, including anxiety, depression, a decreased ability to concentrate, and increased nervousness. The psychologist states that the applicant’s spouse’s condition became more acute when faced with the possibility of losing her family. The psychologist notes that according to the applicant’s spouse, she has panic attacks, during which she has difficulty breathing, becomes dizzy, and feels like fainting several times per week. She also reports having severe headaches that can last several days. According to the psychologist, the applicant’s spouse is preoccupied with negative thoughts and feelings about events in her life, which intensify feelings of depression and anxiety and create depressive preoccupations. This interferes with her ability to

function, and being overwhelmed with environmental and psychological symptoms, she has progressively decompensated. The psychologist states that without proper support and treatment, there is a high risk of considerable decompensating and she may require hospitalization in the future. The psychologist diagnoses the applicant's spouse with major depressive disorder, moderate, and generalized anxiety disorder with panic attacks. He concludes that the applicant's spouse may need a psychiatric evaluation, psychological therapy, and she should maintain her close family support system.

Counsel further contends that the applicant's spouse will suffer financial hardship if the applicant's waiver application is not approved and she remains in the United States without him. The applicant's spouse states she depends on the applicant for financial support and she will not be able to raise their children alone and manage her career if they are separated. While the record indicates that the applicant's spouse is employed as a registered nurse, earning an hourly salary of \$31.00, her employer explains that the applicant's spouse reduced her work hours because of family obligations; as of October 2012, she was working two shifts per week. Financial documentation in the record indicates that the applicant maintains employment authorization in the United States and contributes financial support to the family.

In addition, the applicant's spouse would also experience extreme hardship were she to remain in the United States without the applicant based on the emotional harm she will experience due to concern about the applicant in Haiti, which, when combined with the financial hardship resulting from loss of the applicant's income and the difficulties of raising and supporting their two children on her own, constitutes hardship that is beyond the common results of removal or inadmissibility.

Thus, the record establishes that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the U.S. citizen spouse and two U.S. citizen children would face if the applicant were returned to Haiti, regardless of whether they accompanied him or remained in the United States; the applicant's residing in the United States for more than nine years while trying to legalize his immigration status, and his apparent lack of a criminal record. The unfavorable factor in this matter is his attempt to unlawfully enter the United States.

The immigration violation committed by the applicant is serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's 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.

ORDER: The appeal is sustained.