



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

DATE: MAY 20 2014

OFFICE: NEWARK, NEW JERSEY

File: [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 Field Office Director, Newark, New Jersey, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Decision of the Field Office Director*, dated October 3, 2013.

On appeal counsel contends that the field office director erred in finding that the applicant failed to establish that if a waiver is not granted, his U.S. citizen spouse will suffer extreme hardship. *See Notice of Motion or Appeal (Form I-290B)*, received November 1, 2013 and *Counsel's Appeal Brief*, dated November 25, 2013.

The record contains, but is not limited to: Form I-290B; counsel's appeal brief and earlier letter brief in support of a waiver; various immigration applications and petitions; hardship affidavits from the applicant's spouse; affidavits from the applicant and his spouse's mother; letters of character reference, support and concern; medical records and documents; employment, tax and financial records; school and student loan documents; medical, divorce, and financial documents for the applicant's spouse's mother; birth and marriage certificates; visa-related documents; and country-conditions reports for Jamaica. The entire record was reviewed and considered in rendering this decision on the appeal.

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.

The record shows that during his August 27, 2012 adjustment of status interview, the applicant admitted that in order to secure a U.S. visa and admission to the United States, he falsely indicated on a nonimmigrant visa application dated March 13, 2009, that he was married. Based on the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. He requires a waiver under section 212(i) of the Act.

A waiver of inadmissibility under sections 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. In the present case, the applicant's spouse is the only 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*, 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 is a 25-year-old native and citizen of the United States who asserts separation-related hardship of an emotional/psychological, physical/medical, and economic nature. Documentary evidence shows that the applicant's spouse has been diagnosed with the Human Pappiloma Virus (HPV), for which she is being monitored through biannual pap smears and has undergone at least one colposcopy, and Narcolepsy for which she has been assessed through a sleep study and referred for follow-up behavioral therapy and medication. Medical information sheets in the record indicate that while there is currently no cure for either condition, both can be managed through careful monitoring, behavioral modifications, and treatment of symptoms. The applicant's spouse indicates that significant stress related to potential separation from the applicant, on whom she is emotionally and economically dependent, has exacerbated her conditions, causing her to suffer breakouts of genital warts which in turn leave her feeling ashamed and very depressed. She adds that constant worry is causing her to lose focus while studying to become a Licensed Practical Nurse (LPN). The applicant's spouse explains that when one's immune system is overloaded with stress, flare-ups of HPV symptoms occur more frequently. The information sheet confirms that persons with weak immune systems may be less able to fight off HPV and more likely to develop health problems, including cervical and other cancers.

The applicant's spouse explains that she cannot submit tangible proof of her mental and emotional health related to these chronic conditions and their exacerbation as a result of stress over potential separation from the applicant. She states that she is close to a nervous breakdown but cannot afford to see a therapist. Similarly, the applicant's spouse indicates that she knows she must undergo treatment for Narcolepsy, but the sleep study alone was very expensive, she does not have health insurance, and she cannot afford to take on a greater financial burden at this time. Further addressing economic hardship, the applicant's spouse avers that as she is in nursing school, the applicant pays all their bills - including for her medical treatment and her student loans and credit card bills which are in excess of \$100,000. She explains that while she works two jobs, they are both part-time and pay only minimum wage. Corroborating wage documents show that the

applicant earns approximately four times what his spouse earns, and billing statements confirm the spouse's level of debt. The applicant's spouse states that her mother, with whom she and the applicant reside, is in deep financial trouble and relies on the applicant's income to help with her car payment, gasoline, insurance, and other necessities in addition to rent payments which go toward her mortgage. The applicant's spouse's mother confirms in her affidavit that she is in dire financial straits and about to lose her home as a result of a contentious divorce and back problems, for which she has required short-time medical leave from work. She indicates that without economic assistance from the applicant, she would be unable to meet her financial obligations and keep a roof over her own head and that of the applicant's spouse. Corroborating financial and medical records for the applicant's spouse's mother have been submitted for the record.

The AAO has considered cumulatively all assertions of hardship to the applicant's spouse including the economic, emotional, and physical/medical impacts of separation from the applicant, and the permanent nature of the section 212(a)(6)(C)(i) bar. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship due to separation from the applicant.

Addressing relocation, the applicant's spouse asserts hardship of an emotional, familial, medical, economic, and employment nature. She indicates that she has lived in the United States her entire life, and while she has nominal family ties to Jamaica, her closest relative there is an elderly paternal grandmother who suffers from diabetes and Alzheimer's and is in no position to support or house her. Conversely, the applicant's spouse describes a very close relationship with her mother, with whom she and the applicant reside and who relies upon them for support, and an equally close relationship with her father in Florida and a number of other relatives. The applicant's spouse explains that she has nearly completed nursing school and the fulfillment of her dream to work as an LPN, employment through which she will be able to pay down her significant student loan obligations and credit card debt in the United States. She avers that she would be unable to find work in Jamaica, where unemployment is very high, she would not be licensed as a nurse and there are no LPN programs. She states that were she to go further into debt and start over to train as a Registered Nurse (RN), she does not believe she would be able to sustain the rigors of a full-time RN program given her narcoleptic condition. The applicant's spouse fears that the applicant will be unable to secure employment in Jamaica sufficient to sustain them, and would no longer be able to assist her mother and his family financially. Country conditions reports submitted for the record indicate that the unemployment rate is high and the minimum wage is just \$56.18 per week. The applicant's mother writes that due to the pervasive lack of jobs, she sometimes sells in the market day and night to make ends meet for her children, but without the applicant's contributions would be unable to do so. She explains that her home has no road, no electricity, and no gas stove, and though she has a coal pot, she cannot afford coal. The applicant's mother states that her home has no running water and she cannot afford to build a tank and must rely on rainwater and the kindness of neighbors for water.

The applicant's spouse expresses concern for her safety as a result of Jamaica's high crime rate and for her health as a result of Jamaica's lack of adequate medical care and facilities – particularly in light of her two medical conditions, one of which puts her at a greatly increased risk of developing cancer. Country conditions documents submitted for the record confirm that crime,

including violent crime, is a serious problem in Jamaica, and that medical care is much more limited than in the United States.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including her adjustment to a country in which she has never resided and to which she has no close family ties or support; her lifelong residence in the United States; her close family ties to the United States – particularly to her mother with whom she and the applicant reside and provide financial support, and to her father and other relatives; her close community and academic ties to the United States where she is about to complete her LPN program; her significant medical conditions and ties to trusted physicians in the United States; and her stated medical/health-related, emotional/psychological, employment/economic, and safety-related concerns about Jamaica. Considered in the aggregate, the AAO finds the evidence sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to Jamaica to be with the applicant.

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.

The favorable factors in the present case include extreme hardship to the applicant's U.S. citizen spouse as a result of the applicant's inadmissibility; the significant emotional and financial support he provides to his U.S. citizen spouse; the applicant's significant family ties to the United States, particularly to his mother-in-law whom he supports financially and his own grandfather; attestations by others to his good moral character and essential presence in the community; his payment of taxes in the United States; and his apparent lack of any criminal record. The unfavorable factors are the applicant's immigration violations, which include his misrepresentation of marital status in order to secure a U.S. visa and admission into the United States, and his periods of unlawful presence and unauthorized employment in the United States. Although the applicant's violations of immigration law are significant, the positive factors in this case outweigh the negative factors. Therefore, pursuant to section 212(i) of the Act, the AAO finds 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.

ORDER: The appeal is sustained.