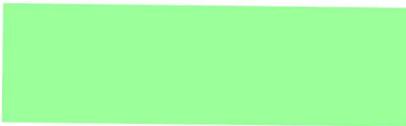


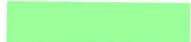
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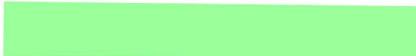
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: **NOV 13 2014** Office: PHILADELPHIA FIELD OFFICE 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 (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,


for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Philadelphia, Pennsylvania, denied the waiver application. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision dismissing the appeal will be affirmed.

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 procuring admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated June 17, 2013.

On appeal we determined that the record did not contain sufficient evidence to show that the hardships faced by the applicant's spouse rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Decision of the AAO* dated May 27, 2014.

On motion counsel for the applicant contends that the applicant has an abundance of evidence to prove extreme hardship to her spouse. With the motion counsel submits a brief, copies of previously-submitted medical progress notes for the applicant's spouse, financial documentation, and country information for Jamaica. The record also contains statements by the applicant and her spouse submitted with the waiver application, medical documentation for the applicant's spouse submitted on appeal of the waiver denial, and financial documentation submitted in support to the applicant's Application to Adjust Status (Form I-485). 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 that:

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 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 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.

The record reflects that the applicant entered the United States in May 1990 under the Visa Waiver program by using a fraudulent British passport. Counsel does not contest the finding that the applicant is inadmissible under section 212(a)(6)(C)(i) if the Act for fraud or 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 spouse is the only qualifying relative in this case. 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-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. *Salcido-Salcido v. INS*, 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.

On appeal we found the spouse’s 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. We found that although the applicant’s spouse described his love for the applicant and his need for her companionship, no detail or supporting evidence had been provided explaining the exact nature of any emotional hardships the spouse may experience and how such emotional hardships are outside the ordinary consequences of removal. We found that the record contained no explanation from a physician treating the applicant’s spouse of the severity of any medical condition he has or a description of any needed treatment, and that without more information the record did not establish that his medical condition requires the applicant’s presence in the United States. We also noted that neither counsel nor the applicant had asserted any financial hardship for the spouse because of separation.

We further found that the record failed to establish that the applicant’s spouse would experience extreme hardship if he were to relocate to Jamaica. We found that although counsel asserted that the spouse’s medical problems would not get proper attention in Jamaica, the evidence in the record was insufficient to establish that the applicant’s spouse suffers from a condition for which he could not get proper care or that he would not have access to needed medications in Jamaica. We found that despite counsel’s assertions that inability to find work at his age, health concerns, crime, and cultural differences would result in hardship to the applicant’s spouse, country information submitted to the record described generalized country conditions and failed to establish that the applicant’s spouse would be at risk as a result of relocating to Jamaica to reside with the applicant.

On motion counsel asserts that a medical report shows that the spouse suffers from various medical disabilities and that the applicant’s illness puts additional burden and stress on her spouse. Counsel asserts that the applicant’s spouse and children have medical and psychological issues and that the

applicant takes care of her stepchildren physically and financially. In a statement dated October 24, 2012, the applicant's spouse described his close relationship with the applicant and her relationship with his family and friends, and stated that being without her would be a hardship for him. The applicant's spouse also stated that he and the applicant help each other eat the right foods and remind each other to take their medication. No updated statement from the applicant or her spouse has been submitted.

Here, the deficiencies noted in the appeal dismissal have not been addressed on motion. The record contains no detail or supporting evidence explaining the exact nature of any emotional hardship the applicant's spouse may experience and how such emotional hardships are outside the ordinary consequences of removal. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)). Further, on motion counsel submits copies of medical progress notes for the applicant's spouse previously submitted to the record. These are hand-written notes not easily understood and contain no clear explanation from a treating physician of the exact nature and severity of any condition he has or how any treatment requires the applicant's presence in the United States.

Counsel asserts that the applicant contributes financially because her spouse does not earn enough to support the household so he would suffer financial hardship if the applicant leaves the United States. Counsel also states that the applicant's spouse is in college and relies on the applicant's income for household expenses. Submitted on motion are a letter from the applicant's employer stating that she has been employed since 2001, pay statements for the applicant and her spouse, a bank statement for the spouse, and a transcript of college courses for the spouse. However, the record contains no updated statements from the applicant or her spouse about any financial hardship the spouse would experience due to separation from the applicant, nor has any documentation been submitted showing the spouse's current expenses, assets, and liabilities or his overall financial situation to establish that without the applicant's physical presence in the United States her spouse will experience financial hardship.

Here we find that the record fails to establish that the applicant's spouse will suffer extreme hardship as a consequence of being separated from the applicant. The record also fails to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Jamaica to reside with the applicant.

Counsel asserts that the spouse's health problems would not get proper medical attention in Jamaica. Although significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship, the medical documentation submitted to the record is insufficient to establish that the applicant's spouse has such a condition, and country information submitted to the record does not establish that the applicant's spouse would be unable to obtain proper medical care.

Counsel asserts that the country's crime rate is astronomical, so it is unsafe for the applicant's spouse, and Americans are targeted for crime. Country information submitted to the record describes general crime trends and notes some high crime areas. The record shows that the applicant was born in [REDACTED] but the record does not indicate where the applicant would now reside or how conditions specifically affect the applicant's spouse. The report submitted by counsel on motion, a 2013 crime and safety report for Jamaica from the U.S. Department of States Bureau of Diplomatic Security, states that there is no evidence that criminals and gang-related activities specifically target U.S. citizens.

Counsel also asserts that the unemployment rate in Jamaica is extremely high and that foreign investors are withdrawing their investments due to instability and uncertainty in the country's economic and political future. In his October 2012 statement the applicant's spouse asserted that he is established in the United States with nothing anywhere else. However, he provided no further explanation and no updated statement has been submitted to the record. The record does not contain evidence that the applicant and her spouse, given their apparent training and skills, would be unable to obtain employment in Jamaica. Evidence in the record therefore fails to establish that the applicant's spouse would be at risk as a result of relocating to Jamaica to reside with the applicant.

A waiver of inadmissibility is available only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, a waiver of inadmissibility is available only in cases of extreme hardship and not in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining 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 motion is granted. The prior decision dismissing the appeal is affirmed.