



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

(b)(6)



DATE: **NOV 18 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 attempted to procure 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 is applying for 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 lawful permanent resident spouse.

The director found that the applicant 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 May 21, 2014.

In support of the appeal, the applicant submits the following: affidavits from the applicant's spouse and mother-in-law, a Death Registration Form for the applicant's mother, a letter from the applicant, financial documentation, and a letter from the applicant's spouse's treating ophthalmologist in Jamaica. 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 of inadmissibility, the record establishes that the applicant attempted to procure entry to the United States in 1990 by presenting fraudulent documentation. The applicant is thus inadmissible under section 212(a)(6)(C)(i) of the Act, for having attempted to procure entry to the United States by 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 lawful permanent resident spouse is the only qualifying relative in this case. Hardship to the applicant or her mother-in-law 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-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. I.N.S.*, 138 F.3d 1292, 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 lawful permanent resident spouse contends that he will suffer extreme hardship were he to remain in the United States while his spouse continues to reside abroad due to her inadmissibility. The applicant's spouse first explains that he met his wife over 19 years ago, and they have been married for over 16 years, and long-term separation from her is causing him emotional hardship. He further contends that he is suffering hypertension due to the prolonged separation from his wife. The applicant's mother-in-law contends that her son is experiencing financial hardship as he will have to take over the mortgage of her home in New Jersey when she retires and he is maintaining the home in Jamaica where the applicant resides. She further asserts that her son is unable to travel to Jamaica often to visit the applicant due to the expenses associated with travel.

We acknowledge the applicant's spouse's contention that he will experience emotional hardship were he to remain in the United States while his wife continues to reside abroad, but the record does not establish the severity of this hardship or the effects on his daily life. A letter from the applicant's spouse's treating ophthalmologist states that the applicant's spouse suffers from uncontrolled hypertension and a significant reduction in the visual acuity of his right eye. The letter does not, however, provide detail about any limitations on his daily activities and ability to care for himself or what hardships he will experience were his wife specifically to continue residing abroad. Further, we note that the applicant's spouse was diagnosed with hypertension in June 2004, well before he relocated to the United States. Further, we note that the applicant's spouse resides with his mother. The applicant has not established that her mother-in-law is unable to assist her husband as needed.

As for the financial hardship referenced, the applicant has not provided any documentation on appeal establishing the applicant's, her spouse's, and her mother-in-law's income and expenses and assets and liabilities to establish that were the applicant to continue to reside abroad, her spouse would experience financial hardship. Alternatively, it has not been established that the applicant is unable to support herself in Jamaica and maintain her home in Jamaica, as the record establishes that she has been gainfully employed, since 1991, for [REDACTED] in Jamaica. 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)). The

applicant has thus not established that her spouse would experience extreme hardship were he to remain in the United States while his wife continues to reside abroad due to her inadmissibility.

In regard to relocating abroad to reside with the applicant as a result of her inadmissibility, the applicant first explains that medical care is not readily available for her spouse in Jamaica. Further, the applicant's spouse details that her husband sold his taxi in Jamaica when he relocated to the United States and were he to return to Jamaica, it would be difficult for him to operate a taxi as the road license he had is already assigned to someone else. In addition, the applicant's spouse maintains that her husband's family, including his mother, reside in the United States and he has developed strong ties to his community and relocating to Jamaica would cause him hardship. Finally, the applicant's spouse contends that his ailing mother needs his daily care and support and were he to relocate to Jamaica to reside with the applicant, he would not be able to help his mother with her mortgage as he would not be able to obtain gainful employment in Jamaica.

To begin, the applicant has not provided supporting documentation to establish that her husband would not be able to obtain gainful employment in Jamaica. Further, the record establishes that the applicant's spouse is still receiving medical care in Jamaica, as evidenced by the letter provided by his ophthalmologist in July 2014, well after the applicant's spouse became a lawful permanent resident of the United States. It has thus not been established that the applicant's spouse would not be able to obtain affordable and effective medical care for his condition in Jamaica. Furthermore, the applicant has not established with supporting documentation that her mother-in-law will experience emotional or financial hardship were her son to return to Jamaica and that such a predicament would cause the applicant's spouse extreme hardship. We note that the applicant's spouse became a lawful permanent resident of the United States approximately one year ago. The applicant has not established that her spouse will experience extreme hardship were he to relocate to his native country, where he resided until he became a permanent resident in November 2013, to reside with the applicant.

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 we are 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.

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.