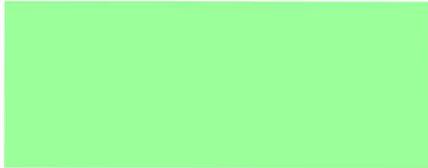




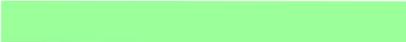
U.S. Citizenship  
and Immigration  
Services

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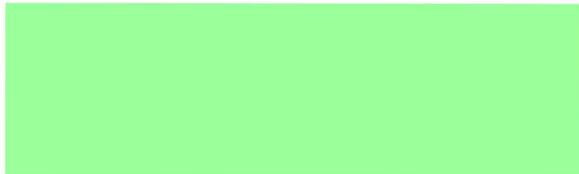
DATE: NOV 21 2014 OFFICE: NEBRASKA SERVICE CENTER

FILE: 

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. 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,



Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti 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 attempting to procure an immigration benefit by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen mother.

The Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative upon separation or relocation. The Director denied the application accordingly. *See Decision of the Director*, dated May 9, 2014.

On appeal, counsel for the applicant asserts that the applicant's mother suffers from serious health conditions so that the applicant is needed to care for her on a daily basis. Counsel further asserts that the applicant's mother would suffer from adverse country conditions, including a lack of needed health care, upon relocation.<sup>1</sup>

In support of the waiver application and appeal, the applicant submitted letters from herself and her family members, identity documents and medical documentation concerning her mother. 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

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<sup>1</sup> Counsel asserts that the applicant merits reconsideration of her Form I-601, Application for Waiver of Grounds of Inadmissibility, based on section 244(a) of the INA. Section 244(a) of the INA currently refers to temporary protected status and, prior to April 1, 1997, suspension of deportation. As the applicant has applied for a waiver of section 212(a)(6)(C)(i) inadmissibility, her application has been submitted pursuant to section 212(i) of the INA. There is no indication that the applicant is seeking suspension of deportation or temporary protected status at this time.

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 applicant applied for an F24 visa as the unmarried daughter of a lawful permanent resident of the United States. Upon interview for this application, the applicant concealed that she was married and ineligible for entry pursuant to this visa classification. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure a visa and admission to the United States through fraud or misrepresentation. Counsel does not dispute this ground of inadmissibility on appeal<sup>2</sup>.

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. The applicant's mother 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-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

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<sup>2</sup> The applicant's mother asserts that neither she nor the applicant understood that the applicant was required to be single for the petition to be approved. As noted, the applicant concealed her true marital status at the time of her visa interview. The burden is on the applicant to demonstrate by a preponderance of the evidence that she was unaware of the false representations in her application. *See* Section 291 of the Act, 8 U.S.C. § 1361. The evidence is insufficient to find that the applicant did not willfully misrepresent a material fact to procure a benefit under the Act.

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 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.

The record reflects that the applicant is a 46-year-old native and citizen of Haiti. The applicant’s mother is a 78-year-old native of Haiti and citizen of the United States. The applicant is currently residing in Haiti.

The applicant’s mother asserts that she is seriously ill due to several health conditions and requires assistance with her medication, feeding and mobility. The applicant’s mother contends that her children who reside in the United States have been helping her, but are busy with their own lives and need the applicant to share the burden. Counsel asserts that the applicant’s mother cannot afford the services of an assisted living institution so that she requires the applicant’s presence in the United States.

The record contains a letter from [REDACTED] indicating that the applicant's mother has been diagnosed with diabetes, hypertension, hyperlipidemia, neuritis and mild cognitive impairment. The letter indicates that the applicant's mother's mild cognitive impairment is likely progressive in nature and that the applicant's mother requires assistance with prompting, translation and transportation.

The applicant's siblings, including two sisters and a brother, submitted letters of support stating that their mother's health conditions have rendered her nearly immobile and in need of care. One of the applicant's sisters asserts that she currently drives their mother to doctors' visits, but her own children attending college out-of-state need her, so she must relocate. The applicant's other sister contends that she works from 9:00 a.m. to 5:00 p.m. and is only able to assist their mother for a few hours at night. The applicant's sister also contends that their mother requires 24-hour care and is no longer receiving homecare assistance. The applicant's brother asserts that he works from 9:30 a.m. to 5:30 p.m. and does not have the time he would like to devote to assisting their mother. The record contains documentation from a home health provider stating that the applicant's mother was no longer receiving physical therapy as of November 1, 2012, as she no longer required skilled physical therapy. The medical letter submitted by [REDACTED] does not refer to the applicant's mother's mobility or any future prognosis in that regard.

It is noted that the medical letter also indicates that the applicant's mother's health conditions are being controlled with medication, supportive treatment and family support. The letter, dated May 29, 2014, further states that the applicant's mother is receiving adult day care. It is acknowledged that the applicant's mother is suffering from health conditions that require her to rely upon the assistance of others. However, there is no detailed information in the record concerning the applicant's mother's participation in adult day care or the extent to which she is receiving the support she requires through this service. Further, there is no indication that the applicant's sister's contribution, driving their mother to doctors' appointments, could not be fulfilled through other means of transportation. The record is insufficient to determine that the applicant's mother is not receiving the care and support she requires through her family members and outside services. 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's mother asserts that she has been depressed and that the applicant's absence has augmented her depression. The applicant's siblings also assert that their mother's health conditions and her separation from the applicant have led to her depression. The record does not contain any further information, including medical documentation, indicating any psychological diagnoses for the applicant's mother.

It is acknowledged that separation from a child often creates hardship for both parties, and the evidence indicates that the applicant's mother is suffering hardship due to separation from the

applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's mother is suffering extreme hardship upon separation from the applicant<sup>3</sup>.

Counsel asserts that the applicant's mother cannot relocate to Haiti to reside with the applicant because of the country conditions in Haiti and her inability to access needed health care. The record indicates that the applicant's mother has three children currently residing in the United States. The record also indicates that the applicant's mother is 78 years of age and suffering from various health conditions for which she currently receives ongoing care and support in the United States. The Department of State issued a travel warning for Haiti, dated March 12, 2014, stating that medical facilities are particularly weak in Haiti so that U.S. citizens with health concerns have been unable to find necessary medical care. In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if she relocated to Haiti.

The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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).

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. Cf. *Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also cf. *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen mother 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 balancing

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<sup>3</sup> Counsel contends that *Matter of Louie*, 10 I&N Dec. 223 (BIA 1963) containing similar facts, including an ailing U.S. citizen parent, resulted in a finding of extreme hardship. It is noted that the U.S. citizen parent in that case, unlike the applicant's mother, did not have any other close relatives residing in the United States and was receiving both financial and transportation support from his son.

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Page 7

*NON-PRECEDENT DECISION*

positive and negative factors to determine whether the applicant merits this 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 appeal is dismissed.