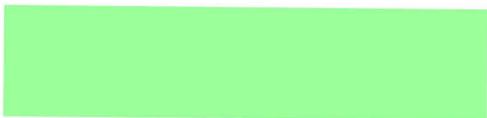




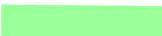
U.S. Citizenship
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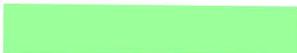
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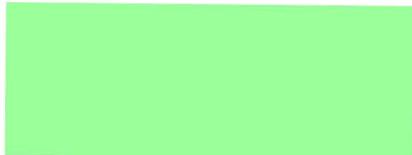
Office: NEW YORK

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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting District Director, New York, New York, 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 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 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 acting district 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 Acting District Director* dated February 28, 2014.

On appeal counsel for the applicant contends that USCIS abused its discretion by not fully considering evidence of financial difficulties, medical conditions, and adverse country conditions, and not evaluating the resulting hardships. With the appeal counsel submits a brief, a statement from the applicant, and medical documentation for the applicant's spouse. The record contains previously submitted statements from the applicant and her spouse, medical documentation for the applicant's spouse, financial documentation, letters of support from friends, and country information for Haiti. 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 on September 11, 2004, the applicant sought to procure admission to the United States with a photo-substituted passport and fraudulent permanent resident card issued in the

name of another person.¹ Based on this information the acting district director found the applicant inadmissible for misrepresentation. Neither counsel nor the applicant has disputed the finding of inadmissibility.

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

¹ The applicant was issued a notice to appear before an immigration judge and paroled into the United States, and her application for asylum and withholding of removal was denied by the immigration judge, who issued a removal order on September 19, 2005. The applicant has applied for and been granted temporary protected status currently valid until January 22, 2016.

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 counsel asserts that the documentation provided regarding the spouse’s medical, emotional, and financial hardships demonstrates that he would suffer extreme hardship. Counsel states that the applicant’s spouse is under care for hypertension, high cholesterol, and depression. In a previous brief counsel asserted that the spouse is emotionally and physically dependent on the applicant. The spouse states that separation would be a burden emotionally, mentally, financially, and physically, and that the applicant makes him a better person. He states that without the applicant he will be constantly depressed and that when he is overly stressed his blood pressure gets higher and would become hard to manage.

A psychological evaluation through a single telephonic interview states that the applicant’s spouse appears to have been treated abusively by his ex-wife, which resulted in a major depressive episode. It states that after divorcing his first wife the applicant’s spouse could not concentrate and became depressed but since meeting the applicant has become a happier person again. The evaluation states that the applicant’s spouse is vulnerable to experiencing another depressive episode if he is separated from the applicant as she is the main factor helping him heal and he relies on her in multiple ways. It states that the applicant does “everything” for her spouse, including cooking, cleaning, and reminding him to take medication and see his doctor. It states that she comforts him when he is tense. Although the documentation on the record indicates the applicant’s spouse would experience some emotional hardship upon separation from the applicant, the evidence does not establish the severity of the hardship or the effects on his daily life or that any hardship to the spouse would be beyond the hardships normally associated when a spouse is found to be inadmissible.

The applicant states that her spouse has high blood pressure and that she needs to be near him and to support him in daily activities. Neither the applicant nor her spouse provides detail or supporting evidence of any daily activities of her spouse that require her assistance. Medical documentation submitted to the record indicates that the applicant's spouse has hypertension, but otherwise contains only test results and handwritten notes from medical checkups without an explanation from a treating physician of any condition or treatment for the spouse that would require the applicant's presence in the United States.

Counsel states that if the applicant returned to Haiti, it would be impossible for her spouse to pay bills, especially the mortgage as she would not be able to find a job there. Financial documentation submitted to the record shows the spouse's income and includes a joint tax return from 2013 and a 2013 bank statement as well as utility bills in the applicant's name and a lease in the name of another person. No documentation has been submitted showing a mortgage or establishing the spouse's current expenses, assets, and liabilities or his overall financial situation, or showing any employment and financial contribution made by the applicant, to establish that without the applicant's physical presence in the United States her spouse will experience financial hardship.

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 recognize that the applicant's U.S. citizen spouse will endure some hardship as a result of long-term separation from the applicant. However, his 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 based on the record. Thus 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.

We find, however, that the record establishes that the applicant's spouse would experience extreme hardship if he were to relocate to Haiti to reside with the applicant. Counsel asserts that if the spouse relocated to Haiti he would lose benefits such as medial insurance, have to pay cash for medical services, and not have financial resources to get proper medical care. Counsel asserts that Haiti's health care system is terrible and it is increasingly difficult to supply hospitals with drugs and surgical consumables, that emergency care and essential services are not guaranteed, and that hospitals are old and badly maintained. Counsel asserts that the spouse's life would be in danger because there is no police in Haiti, where crime and violence are growing amid desperate shortages of food, water, and medical supplies.

Counsel further asserts that from Haiti the applicant and her spouse would have limited ability to support their family, and that the spouse would be unlikely to adjust to life in Haiti, the poorest country in Western Hemisphere. Counsel asserts that if the applicant's spouse relocates to Haiti he would have to use retirement savings and that after that is depleted he would be destitute.

The applicant's spouse states that if he moves to the applicant's country he will have tremendous stress, anxiety, and depression. He also states that his son from his prior marriage lives in the United States and that it will be devastating not to be here to help his son and watch him grow.

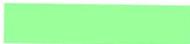
According to the U.S. Department of State, Haiti's emergency management infrastructure remains inadequate and medical facilities are particularly weak. Some U.S. citizens with serious health concerns have been unable to find necessary medical care and have had to arrange evacuation to the United States. It also notes that U.S. citizens have been victims of violent crime, including homicide and kidnapping. The Haitian authorities' ability to respond to emergencies is limited and in some areas nonexistent. See Travel Warning-U.S. Department of State, dated March 12, 2014

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. 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). On March 03, 2014, current Secretary of Homeland Security Jeh Johnson announced that TPS for eligible nationals of Haiti will be extended for an additional 18 months, effective July 23, 2014, through January 22, 2016. The Secretary has determined that an extension is warranted because the conditions in Haiti that prompted the TPS designation continue to be met. There continues to be a substantial, but temporary, disruption of living conditions in Haiti based upon extraordinary and temporary conditions in that country that prevent Haitians who have TPS from safely returning. See Notice of Extension of the Designation of Haiti for Temporary Protected Status, 79 Fed. Reg. 04593 (March 3, 2014)

Considering the evidence of hardship in the aggregate, including the applicant's spouse loss of employment, separation from his son, and concern about continuing unstable conditions in Haiti, we find that the applicant's spouse would experience extreme hardship if he were to relocate to Haiti with the applicant.

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 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.

(b)(6)



NON-PRECEDENT DECISION

Page 7

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 appeal is dismissed.