



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: OCT 01 2014

Office: MILWAUKEE

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:

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Milwaukee, Wisconsin. 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 procuring a visa and admission to the United States by fraud or willful misrepresentation of a material fact. The applicant's spouse and child are U.S. citizens. She seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Form I-601, Applicant for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Field Office Director*, dated March 12, 2014.

On appeal, counsel details the hardship that the applicant's spouse would experience if the waiver application is not approved and provides new evidence of hardship. *Brief in Support of Appeal*, dated April 25, 2014.

The record includes, but is not limited to, statements from the applicant and her spouse, education records, financial records, employment records, country-conditions information about Jamaica and letters of support. 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, 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.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now Secretary of the Department of Homeland Security (Secretary)] may, in the discretion of the [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 [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 was admitted to the United States using an assumed name on August 27, 2003, with a visitor's visa and a passport she purchased after the U.S. embassy denied her visa application. She is therefore inadmissible to the United States pursuant to section

212(a)(6)(C)(i) of the Act for procuring a visa and admission to the United States through willful misrepresentation of a material fact. The applicant does not contest 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. Hardship to the applicant or her child can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services 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*, 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.

We will first address hardship to the applicant's spouse if he relocates to Jamaica. The applicant's spouse states that he was raised in Jamaica, but he has no family there now; he was separated from his mother when she immigrated to the United States; as a result he still is working to repair their relationship, which was damaged by their separation; and relocating to Jamaica would undo the progress they have made. The applicant states that they do not have a home in Jamaica; her spouse's parents live in New Jersey; and her mother "still lives in a ghetto in Jamaica."

The applicant's spouse states that he has lived in the United States since 2003; and he and the applicant had their daughter in 2004, purchased their home in 2005 and completed their college degrees in the United States. The record includes evidence corroborating these statements.

Counsel states that the applicant's spouse has invested significant time and energy in building his career in the United States; having a successful career is one of the most important factors for happiness in one's life; he could not operate his business in a country with high employment and corruption; and he would default on his financial obligations if he left the United States. The applicant's spouse states that his dream of furthering his education in Jamaica became financially impossible; he progressed in the banking industry and obtained a degree in the United States; he started a consulting company with the applicant but her immigration issues are affecting their business's viability; he would have to resign from a position that he enjoys and forfeit a reasonable income; and he would lose their home if he relocated to Jamaica. He also states that he would not be able to find work in Jamaica due to the poor economy, high unemployment levels and general lack of development. He states that he owes \$31,285 in student loan debt and that his credit would be ruined if he moved to Jamaica without the ability to repay his student loan and other debts. He states that the Jamaican dollar has devalued since he left, which has resulted in a higher cost of living. The applicant states that due to a lack of opportunity, upward financial mobility is almost non-existent, and people become stuck in a never-ending cycle of poverty.

The applicant's spouse cites to unemployment and poverty rates in Jamaica, which are corroborated by documentary evidence in the record. He states that his sister-in-law works as an accountant in Jamaica and earns the equivalent of \$7.10 per hour. The record includes employment letters and pay stubs for the applicant and her spouse. The record also includes an article about job satisfaction in the United States and evidence of the family's business. In addition, the record includes copies of the applicant's spouse's student loan and mortgage statements.

Counsel states that the applicant's spouse and child would suffer threats to their personal safety and security due to the generally dangerous and unstable conditions in Jamaica; and the applicant and her spouse currently live in one of the safest areas in the United States. The applicant's spouse states that he was the victim of multiple violent acts at a young age, and the area they would move to in Jamaica has many safety issues, including murder, gun violence and political violence. The record includes country-conditions information corroborating claims concerning crime in Kingston.

Counsel asserts that the applicant's spouse would suffer hardship as a result of the hardship their daughter would experience. The applicant's spouse states that he highlights criminal statistics in Jamaica to emphasize the dangers to families residing there, and he states that their daughter has never been exposed to violence of that "magnitude." He states that their daughter is in one of the best school systems in the state, and her school is beyond the standard of an equivalent school in Jamaica. The applicant's spouse states that their daughter participates in extracurricular activities, and he takes her on trips to see his parents in New Jersey. The record includes evidence of their daughter's activities in the United States.

The record reflects that the applicant's spouse, though a native of Jamaica, has significant family ties in the United States and none in Jamaica. The record also reflects that the applicant's spouse would experience financial hardship upon relocation to Jamaica due to employment issues, the resulting inability to pay his debts, and damage to his credit. Moreover, evidence shows that he has progressed professionally, even with occasional set-backs, since arriving in the United States over 10 years ago, and he would experience emotional and financial difficulties because of a lack of similar opportunities in Jamaica. The record also reflects that the applicant's spouse would be returning to an area of Jamaica that has significant safety issues. In addition, he would experience difficulties stemming from the hardship their daughter, who has assimilated into the American lifestyle, would experience. Considering the totality of the hardship factors presented, we find that the applicant's spouse would experience extreme hardship if he relocated to Jamaica.

We will now address hardship to the applicant's spouse if he remains in the United States without her. Counsel states that the applicant's spouse cannot live without the applicant due to their 22-year dedication to each other; he would not have any help to care for their daughter; and he would become a single father who could not easily be available for their daughter, given his commuting 45 minutes for work. The applicant and her spouse detail their relationship history and describe the emotional difficulty they each experienced while separated before she arrived in the United States. The applicant also states that her spouse depends on her financially and emotionally to care for their family. The applicant's spouse states that without either parent, their daughter would be "deeply" impacted, since their family routine is "structured to facilitate a harmonious operation because of . . .

teamwork.” The applicant’s spouse states that he leaves for work an hour before their daughter goes to school; the applicant works near their daughter’s school; if their daughter needs help, the applicant must be available to assist her; and the applicant takes their daughter to and from her extracurricular activities.

Counsel states that the applicant provides emotional, practical and financial support; with the applicant’s assistance, her spouse has been able to finish school; they purchased their home in a safe community; and they share responsibilities raising their daughter. Counsel states that the applicant earns \$58,000 per year and her spouse earns \$51,000 per year; their monthly basic expenses exceed \$5,000; the applicant's spouse cannot meet their financial obligations without the applicant; he would be unable to afford their home, cars, basic necessities and student loans with his income alone, because their monthly expenses exceed his income; the applicant’s spouse would have to pay for his health insurance, as he is currently under the applicant's plan; the applicant's spouse would have to pay for trips to Jamaica and daycare; and he would likely need to financially support the applicant in Jamaica.

The applicant’s spouse states that there is a strong possibility that he would not be able to afford their mortgage without both incomes. He states that they need two incomes and he explains how in 2008, the applicant worked 14-hour days to support the family. The applicant’s spouse states that their car-loan balance is about \$25,000; his student-loan debt is \$31,285. The record includes an employer letter for the applicant reflecting an income of \$58,000 per year, and a list of their monthly expenses totaling nearly \$5,000. The record includes copies of a mortgage statement and several other monthly bills. The applicant’s spouse states that he would not have been able to advance his education, start a new business and enhance his career without the applicant’s financial support.

The record reflects that the applicant and her spouse began their relationship many years ago as teenagers in Jamaica and that separation would cause her spouse significant emotional hardship. In addition, the applicant’s spouse would either be separated from their daughter or he would be raising her without the applicant. The record reflects that the applicant’s spouse plays a significant role in raising their daughter and if separated from their daughter, he would experience emotional hardship and concern for her safety. In the event she remains in the United States, he would experience hardship related to the aforementioned logistics of his parental responsibilities. Furthermore, the applicant’s spouse would experience significant financial hardship without the applicant. Based on the totality of the hardship factors presented, we find that the applicant’s spouse would experience extreme hardship if he remained in the United States.

Considered in the aggregate, the applicant has established that her spouse would face extreme hardship if the applicant’s waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 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 her 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.

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.

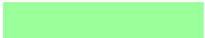
Matter of Mendez-Moralez at 300.

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 (citation omitted).

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and



circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors include the applicant's U.S. citizen spouse and child, extreme hardship to her spouse, letters attesting to her good character, her payment of taxes, statements of remorse for her behavior and the lack of a criminal record. The unfavorable factors include the applicant's misrepresentation, unauthorized period of stay and unauthorized employment.

We find that the favorable factors in the present case outweigh the adverse factors, such 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.