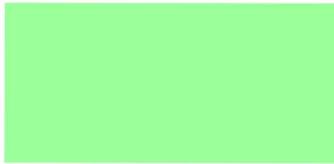


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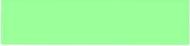


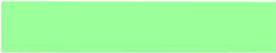
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



Date: OCT 01 2014

Office: NEBRASKA SERVICE CENTER

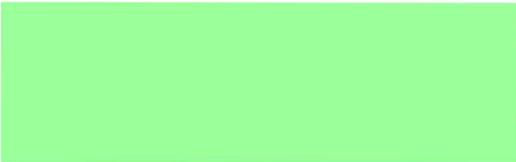
FILE: 

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:



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,



Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, Nebraska Service Center, and an appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on motion. The motion will be granted, the prior decision of the AAO will be withdrawn, and the appeal will be sustained.

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 procured 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 seeks 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 U.S. citizen spouse.

The director concluded that the applicant had 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 September 12, 2013.

On appeal, we determined that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The appeal was subsequently dismissed. *Decision of the AAO*, dated April 7, 2014.

On motion, counsel for the applicant submits the following: a brief, documentation establishing the applicant's spouse's and two children's U.S. citizenship, an affidavit from the applicant's spouse, certificates and academic documentation pertaining to the applicant's children, medical documentation pertaining to the applicant's spouse, employment verification documents for the applicant's spouse, financial documentation, and information about country conditions 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 that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation, the record establishes that the applicant misrepresented her marital status when she applied for a B-2 Visa in December 2007. Specifically, the applicant claimed that she was single and living with her fiancé in Jamaica when in fact she was married and her husband was living in the United States as a lawful permanent resident. By stating that she was single and living with her fiancé in Jamaica when applying for a nonimmigrant visa in December 2007, the applicant led the [REDACTED] Jamaica to believe that she had close family ties, namely, her future husband, in her home country. By failing to disclose that she was married to a lawful permanent resident who was living in the United States, she cut off a line of inquiry which was relevant to the applicant's request for a visitor visa. The applicant is thus inadmissible under section 212(a)(6)(C)(i) of the Act, for 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 U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or the children 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-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 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 (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 that the applicant’s U.S. citizen spouse had not established that he would experience extreme hardship were he to remain in the United States while the applicant resided abroad as a result of her inadmissibility. With respect to the emotional hardship referenced, we noted that the record did not establish the severity of this hardship or the effects on the applicant’s spouse’s daily life. As for the applicant’s spouse’s medical condition, we determined that no documentation had been provided on appeal from his treating physician establishing his current conditions, the severity of the situation, the short and long-term treatment plan and what specific hardships he was experiencing as a result of his wife’s absence. As for the financial hardship referenced, we concluded that the record did not support the applicant’s spouse’s assertion that without his wife’s physical presence in the United States he would experience financial hardship. *Supra* at 4-5.

On motion, the issues raised in our prior decision have been addressed. To begin, counsel has submitted documenting establishing the applicant’s spouse’s diagnosis of Crohn’s disease. In addition, the applicant’s spouse has provided documentation establishing that as a result of his medical condition, he is being treated with both immunologic and biologic medicine for persistent fistulas that require constant monitoring and treatment, including surgery and a strict medical

regimen. As noted by the applicant's spouse's treating physician, the applicant's spouse would benefit emotionally from his wife's daily assistance and support. The applicant's spouse contends that although his mother has been providing him with support through the years, her assistance is not indefinite or guaranteed as a result of her advanced age.

As for the financial hardship referenced, the applicant's spouse has provided documentation establishing that although he is gainfully employed as a school bus driver, he earned \$13,201 in 2013 and he thus does not have the financial ability to take off from work or purchase plane tickets to visit the applicant in Jamaica. Moreover, the applicant's spouse has evidenced on motion that with his income, he is assisting his wife financially while she resides in Jamaica and he claims his two children as dependents on his federal income tax return.

Based on a totality of the circumstances, the applicant has established on motion that her U.S. citizen spouse would experience extreme hardship were he to remain in the United States while the applicant continues to reside abroad as a result of her inadmissibility.

In regard to establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, we found that no supporting documentation had been provided to support the applicant's spouse's assertion that he would experience extreme hardship in Jamaica.

On motion, counsel details that as a result of his medical condition, the applicant's spouse needs continued monitoring and treatment, and long-term separation from affordable and effective care by the medical professionals familiar with his diagnosis and treatment plan would cause him hardship. Furthermore, the record establishes the applicant's spouse's long-term ties to the United States, including the presence of his elderly mother and two children. In addition, the applicant's spouse has documented that he has been gainfully employed for many years and were he to relocate abroad, he would lose his employment and his health care coverage.

Furthermore, the record establishes that the applicant's teenage children are fully integrated into the United States lifestyle and educational system. The Board of Immigration Appeals (BIA) found that a fifteen-year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). We find *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the applicant's children at this stage of their education and social development and relocate to Jamaica would constitute extreme hardship to them, and by extension, to the applicant's spouse, the only qualifying relative in this case.

Finally, counsel has submitted numerous articles regarding the problematic country conditions in Jamaica. The documentation submitted establishes that crime, including violent crime, is a serious

problem in Jamaica and medical care is substandard.<sup>1</sup> The applicant has established on motion that her U.S. citizen spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established on motion that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the record establishes that the situation presented in this application rises to the level of extreme hardship for purposes of a 212(i) waiver. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

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<sup>1</sup> As noted by the U.S. Department of State,

Medical care is much more limited than in the United States. Comprehensive but basic emergency medical services are located only in [REDACTED] and smaller public hospitals are located in each parish. Emergency medical and ambulance services, and the availability of prescription drugs, are limited in outlying parishes. Ambulance service is limited both in the quality of emergency care and in the availability of vehicles in remote parts of the country. Serious medical problems requiring hospitalization and/or medical evacuation to the United States can cost \$15,000 - \$20,000 or more. Doctors and hospitals in Jamaica often require cash payment prior to providing services.

*See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). This office must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and two children would face if the applicant were to remain in Jamaica, regardless of whether they accompanied the applicant or stayed in the United States; community ties; and the apparent lack of a criminal record. The unfavorable factor in this matter is the applicant's willful misrepresentation to procure a nonimmigrant visa, as outlined above.

Although the violations committed by the applicant are serious in nature, the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's 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 motion is granted, the prior AAO decision is withdrawn, and the underlying appeal is sustained.