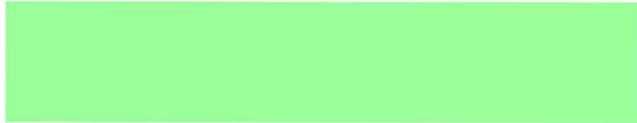


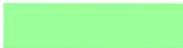


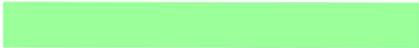
U.S. Citizenship  
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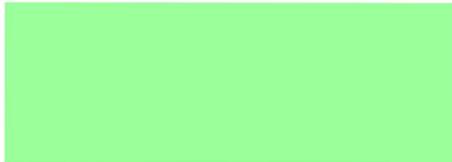
Date: **SEP 05 2014** Office: ATLANTA, GA

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 Field Office Director, Atlanta, Georgia, 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 a citizen of Jamaica who misrepresented his marital status in order to obtain a visitor's visa to enter the United States. The applicant 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). He is the spouse of a U.S. citizen and has two U.S. citizen step-children. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on April 17, 2014.

On appeal, counsel for the applicant indicates that an additional brief would be filed within 30 days. As of the date of this decision, however, no brief or additional evidence has been submitted and the record will be considered complete.

The record contains, but is not limited to, the following documentary submissions: a statement from the applicant's spouse; medical records pertaining to the applicant's son; medical records pertaining to the applicant's daughter; a 2011 tax return for the applicant; copies of tax returns for the applicant's spouse; birth certificates for the applicant's step-children; and photographs of the applicant, his spouse and their children.

Section 212(a)(6)(C) of the Act states, in pertinent part:

- (i) In general. 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 chapter is inadmissible.

The record indicates that the applicant misrepresented his marital status in order to obtain a visitor's visa to enter the United States. As this misrepresentation would have a tendency to influence the decision of the consular officer, it is a material fact and the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding on appeal and expresses regret for the misrepresentation.

Section 212(i) of the Act provides, in pertinent part:

- (1) The Attorney General may, in the discretion of the Attorney General, 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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296 (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.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

The applicant's spouse submitted a statement asserting that she and her family would be devastated if the applicant were removed. She states that he has given his time, financial support and protection in contribution to their household, and describes his relationship with the children as close and supportive. She also states that, prior to meeting the applicant, she was struggling as a single mother of two and working as a hairdresser. She further states that she and the applicant have an appliance repair service that support them. The applicant's spouse also notes that her children have asthma and that the applicant has learned to detect the symptoms of asthma attacks and administer their asthma medications.

The record contains a copy of a 2011 tax return for the applicant indicating that he earned \$15,464 for that year as an HVAC technician. It also indicates a business loss of \$4750. The most recent tax return for the applicant's spouse is for 2010 and indicates that she earned \$14,672 from working as a hairstylist. Her tax returns also indicate that she filed as the head of household, claiming her two children as dependents. While these tax returns indicate that both the applicant and his spouse have been employed, they do not establish what the applicant's spouse's current income is or that she would be unable to meet her current financial obligations. Although the applicant's spouse asserts that the applicant's financial contributions have allowed her and the applicant to work as they please on their appliance repair business, this is not supported by the record. The record does not contain evidence which establishes the existence of any appliance repair business or what income such business provides their household. Without evidence which is more probative of the applicant and his spouse's total earned income, and what their financial obligations are, we cannot make a determination of the degree of financial hardship associated with the applicant's removal.

The record contains photographs of the applicant and his spouse and her children, supporting the assertion that they have a close relationship. However, there is nothing else in the record which would serve to distinguish the emotional or psychological hardship in this case from that which is commonly experienced by the relatives of inadmissible aliens.

The record contains copies of medical documentation for the applicant's two children. The applicant's spouse has asserted that they have asthma, and that the applicant contributes to their care and support by administering their asthma medications and watching for signs of attacks. The medical records that have been submitted are visitation reports containing inter-office, hand-written notes. These documents were prepared for use by medical professionals and we are not in a position to interpret raw medical data, nonetheless, there are references to asthma and asthma treatment in the documents which are sufficient to corroborate the existence of the medical condition for each of her children. However, the most recent report for her daughter is from 2007 and for the son, 2003. There is nothing in plain language from a medical professional indicating the current medical condition of either of the children. Based on the evidence in the record we cannot make a determination as to the seriousness of the children's conditions or what assistance is required of the applicant. The applicant's spouse states that if she had to continue working as a hairstylist it would be difficult for her to watch her children, something the applicant can help her with. As discussed above, however, there is nothing in the record to indicate what the applicant is contributing financially or how much time either spends working at their business so it is unclear that the applicant's absence would result in hardship to his spouse due to having to care for their children.

Even when these hardships are examined in the aggregate, the record does not contain sufficient evidence to establish that the applicant's spouse would experience hardship which rises to the level of extreme due to separation.

The applicant's spouse asserts that she would be unable to relocate to Jamaica with the applicant because her children have medical conditions and she would not be able to obtain treatment for them. However, the record does not contain any evidence indicating that their children would be unable to obtain medical care for asthma 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 record does not establish that the applicant's spouse would experience extreme hardship upon relocation.

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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse 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 determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.