



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **APR 30 2015** Office: NEW YORK CITY

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:

SELF-REPRESENTED

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 waiver application was denied by the New York District Director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica who entered the United States using fraudulent documents. He 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 admission to the United States through fraud or misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his family.

The District Director determined that the applicant had not established extreme hardship to his qualifying spouse if he were removed from the United States and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the applicant asserts that his misrepresentation was not willful and that if his waiver is denied, his wife and child would suffer extreme hardship.

The record includes, but is not limited to: declarations of the applicant and his qualifying spouse, and their acquaintances; financial documents; identity and relationship documents; and school records. The entire record was reviewed and all relevant evidence considered in reaching 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.

In the present case, the record reflects that the applicant entered the United States using a photo-substituted passport belonging to another on February 15, 2001. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act, for having procured admission to the United States through fraud or misrepresentation. The applicant contests his inadmissibility on appeal.

The applicant asserts that he is not inadmissible, because he was a young man when he entered the United States, he was incapable of willfully committing misrepresentation or fraud. The record reflects that the applicant was 24 years old when he presented the photo-substituted passport to gain entry into this country.

Concerning the applicant's assertion that he did not willfully misrepresent his identity for admission, 9 FAM 40.63 N5, in pertinent part, states that:

The term "willfully" as used in INA 212(a)(6)(C)(i) is interpreted to mean knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest

belief that the facts are otherwise. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately made an untrue statement.

The applicant does not explain why he believes that at age 24 he was not old enough to understand that his documents misrepresented his identity. Though the applicant denies having knowledge of the fraud, he provides no evidence to corroborate his claims that he did not know he was presenting another individual's passport to U.S. immigration authorities. Moreover, he admits on his waiver application that he presented a passport in the name of [REDACTED]. The record reflects, therefore, that he knew the passport he presented to gain entry into the United States was not issued in his name. Due to the applicant's willful misrepresentation of material facts, his identity, we find that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

Section 212(i) of the Act provides:

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.

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-Morales*, 21 I&N Dec. 296 (BIA 1996). The applicant's qualifying relative is his U.S. citizen spouse. The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

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 applicant has the burden of proof to establish that his qualifying spouse would suffer extreme hardship in the event that she resides in Jamaica or the United States.

Addressing the emotional hardship she would experience if she were to relocate with the applicant to live in Jamaica, the applicant's spouse states, and the record reflects, that she was born in the United States. She and the applicant were married in the United States in March 2010. The applicant's

spouse states that she has no family in Jamaica; her entire family resides in the United States. She asserts that she is very close to her parents and that being separated from them would be devastating. She says that her father has difficulty with mobility and her mother is disabled and therefore they are dependent upon her and the applicant. She further states that given the high cost of travel, she would not be able to afford to travel home often to see her family, which would add to her anxiety and depression.

Concerning her economic and educational hardship, the applicant's spouse states that she currently works as a nursing assistant and attends school to earn a degree. She asserts that if she moves to Jamaica, she would lose educational opportunities and have to leave her job with "absolutely no prospects" in Jamaica. She adds that if she moves to Jamaica and returns to the United States later, she would have diminished employment opportunities here. The applicant's spouse states that without her current salary, she and her family would live in "horribly sub-standard conditions" in Jamaica.

The applicant does not provide corroborating documentary evidence to establish what financial impact the applicant's spouse would suffer if she resides in Jamaica. The applicant also does not provide evidence concerning where he and his family would live in Jamaica. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *In re Soffici*, 22 I&N Dec. 158, 165 (Reg. Comm. 1998). See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, nothing in the record demonstrates that the applicant and his spouse would be unable to sustain themselves and contribute to their family's financial wellbeing from outside of the United States.

The applicant's spouse also states that in Jamaica, she would not have medical insurance and it would be impossible to have access to adequate health care. The applicant provides no corroborating evidence addressing access to medical care and the related costs they could incur in Jamaica.

The applicant's spouse further states that their son would lose educational opportunities and endure poverty if they moved to Jamaica. The applicant's son, as noted above, is not a qualifying relative under section 212(i) of the Act. Hardship to the applicant's son, therefore, is not a factor in evaluating extreme hardship unless it affects the applicant's qualifying relative, his spouse. The record is not clear about how their son's hardship would affect his qualifying relative, though it is reasonable to assume his spouse would experience some emotional difficulties related to hardship their son may experience.

The record does not contain sufficient evidence to show that the hardships faced by the qualifying spouse should she locate to Jamaica, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Although we observe that the applicant's spouse would experience the disruptions and difficulties normally created by relocation, we do not find these hardships, even when considered in the aggregate, to meet the extreme hardship standard of section 212(i) of the Act. *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996)(holding that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

Accordingly, the applicant has not established that her spouse would suffer extreme hardship upon relocation.

The next issue to be addressed is whether the applicant has established that his qualifying spouse would suffer extreme hardship if she remains in the United States while he returned to Jamaica.

Concerning financial hardship she would experience in the United States without the applicant, the applicant's spouse states that she can barely meet household expenses now that the applicant is ineligible for authorization to work. The record includes evidence of child care expenses amounting to 150 dollars a week, and the applicant's spouse asserts she also has a monthly car payment. The applicant, however, does not submit evidence to show that he would be unable to financially contribute to household expenses incurred by his qualifying spouse and child from Jamaica.

In addition, the applicant's spouse asserts that she would experience emotional hardship in the United States. She says that she has experienced panic attacks since the applicant began having immigration problems and fears that the stress will lead to depression and possibly suicide. She says that she would be lost without the applicant. While his spouse's statements that she is experiencing some emotional difficulties related to the applicant's potential absence are evidence, the applicant does not provide objective corroborating evidence, addressing the state of his qualifying spouse's mental health.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying spouse should she remain in this country, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the applicant has not established extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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.