



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: AUG 26 2015

FILE #: [REDACTED]

APPLICATION RECEIPT #: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. §1182(i)

ON BEHALF OF APPLICANT:
[REDACTED]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey, denied the application for a waiver of inadmissibility. 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 inadmissible 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 attempting to procure admission into the United States through fraud or misrepresentation. The Applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the Applicant did not establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated November 17, 2014.

On appeal, the Applicant, through counsel, submits a brief and additional evidence and states that his spouse will suffer extreme hardship if he is not granted a waiver of inadmissibility. *Letter accompanying Form I-290B, Notice of Appeal or Motion*, filed December 19, 2014.

In support of the waiver application, the record includes, but is not limited to: biographical information for the Applicant, his spouse, and children; a sworn statement from the Applicant's spouse; employment information; copies of federal income tax returns; a photograph of the Applicant and his spouse; and country-conditions information concerning Haiti. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) states:

- (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 a waiver for fraud and material misrepresentation. That section states that:

- (1) The Attorney General [now the 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 indicates that the Applicant attempted to procure admission to the United States on February 21, 2001, using a photo-substituted Haitian passport bearing the identity of a different individual and a counterfeit Temporary I-551, Alien Documentary Identification and

Telecommunication (ADIT) stamp. The Applicant admitted his true identity in secondary inspection and requested asylum. He was found to be inadmissible under sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Act and was placed into expedited removal proceedings. An immigration judge found his testimony concerning his asylum claim not credible and ordered him removed to Haiti.¹ The Applicant does not contest his inadmissibility on appeal.

The Applicant is eligible to apply for a waiver of inadmissibility pursuant to section 212(i) of the Act. The Applicant's only qualifying relative is his U.S. citizen spouse. The Applicant's U.S. citizen children are not qualifying relatives under the Act. In order to qualify for this waiver, the Applicant must first prove that the refusal of his admission to the United States would result in extreme hardship to his qualifying relative. Hardship to the Applicant or the Applicant's children will not be separately considered, except as it is shown to affect the Applicant's spouse. 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 deportation, 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, 885 (BIA 1994); *Matter of Ngai*, 19 I&N

¹ The Applicant's appeal to the Board of Immigration Appeals was dismissed on [REDACTED] 2009. The applicant remains subject to a final order of removal.

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 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, the Applicant states that his spouse, as a result of needing to care for four children alone, would experience hardship more than mere separation and financial difficulties if she were to be separated from the Applicant. The Applicant states that the Applicant’s spouse’s loss is more than the loss that was not considered to be impactful in *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968). In *Matter of Shaughnessy*, the Board considered whether predicted future medical conditions and the potential need for the applicant in that case to support his parents in the future could constitute extreme hardship. The Board held that the applicant did not document a reasonable or strong probability that either of his parents would need his support in the foreseeable future and thus extreme hardship was not established. *Id.* at 813. Here, the Applicant states that his spouse will need his continued support to care for their four children and that she would not have the means to care for them in his absence.

The record indicates that the Applicant and his spouse were married on [REDACTED] 2012 and that the Applicant’s spouse gave birth to a daughter on [REDACTED]. The record does not contain an official birth certificate for the child indicating the child’s father. The record also indicates that the Applicant has four minor children from previous relationships, three of whom are U.S. citizens

and who have the same mother. The fourth child resides in Haiti. The Applicant provides no information concerning his U.S. citizen children's mother or any legal or physical custody that she may have of her children. In her sworn statement dated February 14, 2014, the applicant's spouse states that she lives with the applicant and his three children from his previous marriage, as well as the couple's recently born biological child. The record also contains an undated letter from the director of the [REDACTED] in [REDACTED] New Jersey, stating that the Applicant's two oldest children are registered at the family center at the [REDACTED] and that they reside with the Applicant and his spouse. The record also indicates that the Applicant's two older children had State of New Jersey Health Benefits Identification Cards in [REDACTED]. No information corroborates statements that the Applicant's youngest child resides with the Applicant and his spouse. Although the Applicant and his spouse's assertions about their physical custody of the Applicant's three U.S. citizen children are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)).

Concerning the financial hardship that the Applicant's spouse may experience if she remained in the United States, the record includes her 2012 Form 1040A, Individual Income Tax Return, which indicates that she claimed an income of \$22,869 that year. The Applicant's Form 1040A, Individual Income Tax Return from 2012 indicates that he earned \$30,149 as a textile worker. A document from [REDACTED] dated December 16, 2009, indicates that the Applicant had deposited approximately \$27,452 in a money market account. Although the record indicates that the Applicant receives health care coverage through [REDACTED], it appears that in 2005 and 2006, his two oldest children received health care through the State of New Jersey. In addition, the record includes evidence showing that the Applicant and his spouse's rent is \$1,150 per month. Additional expenses evident from in the record include a gas and electric bill, cable bill, and car insurance bill.

The 2015 Form I-864P, HHS Poverty Guidelines for Affidavit of Support, indicate that based on the Applicant's spouse's 2012 reported income, she would be trying to survive below the federal poverty line for a family of 5 if she could no longer rely on the Applicant's income and she were to become financially responsible for four children. The Applicant's spouse also states that her dream for owning a home where they can live comfortably with all of their children would be shattered if the Applicant's waiver were not approved. We cannot make a conclusion concerning the Applicant's spouse's financial hardship, however, based on the limited documentation in the record concerning her current income and the legal and physical custody of the Applicant's children from his previous relationship. The record does not indicate that the Applicant has physical or legal custody over his youngest child from his previous relationship, and the record does not show legal custody for any of the children. Absent a document from a court or other legal authority, additional documentation concerning the Applicant's responsibility for his children and the role of their mother, we cannot make a conclusion that those children would be

the financial and physical responsibility of the Applicant's current spouse, in the absence of the Applicant. The Applicant bears the burden of proof in these proceedings. Section 291 of the Act, 8 U.S.C. § 1361.

She also states that the Applicant is her closest friend, that they enjoy their daily lives together, and that she would have very little to live for without him with her in the United States. Although the Applicant's spouse's emotional connection to the Applicant and concerns for her emotional health if she were to be separated from her spouse are understandable and relevant to evaluating his hardship, the record lacks documentation that supports concluding that this hardship, in addition to the financial hardship, would amount to extreme hardship. We recognize the impact of separation on families, but the evidence in the record, when considered in the aggregate, does not indicate that the hardship is beyond that which is normally experienced by families dealing with removal or inadmissibility. *See Matter of O-J-O-*, 21 I&N Dec. at 383.

The Applicant does not state specifically what hardship his spouse would experience were she to relocate to Haiti to reside with him. The record indicates that the Applicant's spouse is a native of Haiti who became a naturalized U.S. citizen in 2011. The Applicant does not indicate whether she has family ties in United States or Haiti. The Applicant submits general country conditions information for Haiti. In addition, we take note of the U.S. Department of State's August 5, 2015, Travel Warning for Haiti and the August 7, 2015 Travel Alert for Haiti, which indicate that the emergency and medical infrastructure in Haiti is limited, in addition to noting concern about robbery of U.S. citizens and potential unrest due to upcoming elections in Haiti. The Applicant has not stated what particular risks and hardships that his spouse would expect to experience were she to relocate to Haiti. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the Applicant's spouse relocate to Haiti, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *See Matter of O-J-O-*, 21 I&N Dec. at 383.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the Applicant's U.S. citizen spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The Applicant has not established extreme hardship to a qualifying relative, 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 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