



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF G-A-F-

DATE: DEC. 10, 2015

APPEAL OF PHILADELPHIA FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Jamaica, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Director, Philadelphia Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), because he misrepresented his marital status in order to obtain a nonimmigrant visa to enter the United States. The Applicant seeks a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), to remain in the United States with his U.S. citizen spouse.

The Director found that the Applicant had not established that his spouse would experience extreme hardship if the waiver was not granted and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the Applicant asserts that the Director erred in denying the application, as the Applicant shares a *bona fide* relationship with his spouse and any decision to deport him would cause his spouse extreme hardship. The Applicant submits additional evidence on appeal.

The record includes, but is not limited to, statements from the Applicant and his spouse, medical records for the Applicant's spouse and her daughter, financial records, a mortgage statement, his step-daughter's school record, and reports about conditions in Jamaica. The entire record was reviewed and considered in rendering a decision on appeal.

Section 212(a)(6)(C)(i) of the Act provides in pertinent part:

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 Act is inadmissible.

The record reflects that the Applicant falsely represented himself as married in order to obtain a nonimmigrant visa to enter the United States. Subsequently, the Applicant submitted documentation

to show that he was never married in Jamaica. The Applicant is, therefore, inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for having procured his nonimmigrant visa through willful misrepresentation of a material fact. The Applicant does not contest his inadmissibility on appeal.

Section 212(i) of the Act provides:

(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 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 [Secretary] 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

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, in the Applicant's case, his U.S. citizen spouse. 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).

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 upon possible relocation of the family to Jamaica. The Applicant states that his spouse arrived in the United States from Jamaica as a teenager and has been residing in the United States since that time. Her immediate family members are either U.S. citizens or lawful permanent residents. The Applicant’s spouse has only distant relatives in Jamaica. She does not know them very well and has only limited contact with them. The Applicant further states that crimes, including violent ones, are a serious problem in Jamaica, and that the U.S. Department of State advises against travel in Jamaica’s high-threat areas. Moreover, there have been reports of violations committed against women, which were not adequately investigated and prosecuted by authorities. The Applicant asserts that his spouse suffers from depression and would experience extreme hardship if she were required to reside in such a dangerous environment.

In addition, the Applicant’s step-daughter was born in the United States and never resided in Jamaica. His step-daughter has asthma, and the Applicant asserts that medical care in Jamaica is more limited than in the United States; therefore his spouse and step-daughter may have difficulty

obtaining adequate medical attention and appropriate treatment. The record includes country-conditions information that supports the Applicant's claims.

In her statement the Applicant's spouse avers that because of her medical condition, she has not been able to properly care for her minor daughter without the Applicant's help. Her family in the United States has never assisted her, and she has no one other than the Applicant to support her. The evidence establishes that the Applicant's spouse is currently undergoing treatment for depression and that she has been prescribed medication to relieve general anxiety and tension headaches. In addition, the record shows that the spouse's daughter has been diagnosed with mild persistent asthma and takes medicine on a daily basis to manage symptoms of the disease.

Concerning possible relocation to Jamaica, the Applicant's spouse claims that she has resided in the United States since childhood and developed strong ties to the United States. For this reason, it would be hard for her to transition to life outside of the United States. In addition, she would not be able to find a job in Jamaica because she is an unskilled worker and unemployment in Jamaica is high. Further, the Applicant's spouse has no medical insurance in Jamaica and would have difficulty ensuring proper medical care for herself and her daughter. The record does not include, however, supporting documentary evidence to show that the Applicant's spouse could not be treated for depression in Jamaica or that her daughter could not continue treatment for asthma or obtain necessary medication. In addition, the Applicant has not submitted evidence to show that he or his spouse would not be able to find employment in Jamaica. Moreover, the record is not clear as to whether the Applicant, his spouse, and step-daughter would necessarily have to relocate to a crime-prone area of Jamaica. In her statement the Applicant's spouse asserts that she and the Applicant have no place to live in Jamaica, but she does not provide any additional explanation. Going on record without supporting documentation will not meet the Applicant's burden of proof in this proceeding. *See Matter of Soffici*, 221&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The Applicant's spouse states that her daughter, who was born in the United States, would be negatively affected by relocation to Jamaica, as she has no friends or family there. As noted above, direct hardship to an applicant's child is not relevant in waiver proceedings under section 212(i) of the Act. However, all potential hardship to qualifying relatives must be considered in the aggregate. Hardship to a family unit or a non-qualifying family member, therefore, should be considered to the extent that it affects qualifying family members. It is reasonable to expect that relocation to Jamaica will be emotionally difficult for the Applicant's teenage step-daughter. She will have to adapt to an unfamiliar culture, attend a new school, and make new friends. However, it is likely that the stress associated with her transition to a new environment will be considerably lessened by the fact that English is the language spoken in Jamaica and that the Applicant and his spouse both grew up in Jamaica and are familiar with its culture. Further, the Applicant's spouse has distant relatives in Jamaica. Although her contact with them may be limited, the record contains no evidence to establish that her relatives would be unwilling or unable to provide the family with some assistance and support upon their arrival in the country. Therefore, it appears that the impact of any obstacles

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or challenges that the Applicant's step-daughter may face upon relocation to Jamaica will not be significant enough to substantially elevate the Applicant's spouse's emotional hardship.

We conclude, therefore, that the record lacks sufficient evidence of financial, medical, emotional or other types of hardship, which in their totality establish that a qualifying relative would experience extreme hardship upon relocation to Jamaica.

Addressing the hardships that the Applicant's spouse would experience upon remaining in the United States without the Applicant, the Applicant states that his spouse relies on him to remind and assist her in taking her medication for depression. The record, including two letters from a board-certified family nurse practitioner, indicates that the Applicant's spouse has been under medical care for major depression. The nurse's letter dated September 4, 2014, states that the Applicant's spouse is clinically depressed, with anxiety and ETOH abuse, and that without proper psychosocial support she is at risk for hospitalization. In addition, the nurse's letter dated June 3, 2015, states that the spouse requires the Applicant's support due to depressive disorder with anxiety and his presence and assistance for medical reasons, but it does not provide any further explanation. Neither of the letters fully explains the severity of the Applicant's spouse's condition and the effects such condition has on her capacity to engage in daily activities, including working and caring for her daughter.

The evidence, including the Applicant's spouse's Biographic Information Form G-325, copies of paystubs, and federal tax returns, indicates that she has been continuously employed as a laborer with the [REDACTED], [REDACTED] and as a certified nursing assistant since 2006 and 2007, respectively. Her most recent earning statements indicate that she earns \$500 bi-weekly, on average, from her employment with the [REDACTED]. This evidence suggests that the Applicant's spouse has been able to maintain employment despite her medical problems and that she is capable of financially providing for herself and her daughter. The Applicant has not submitted objective evidence to show that his spouse's ability to continue working while taking care of her daughter would be affected or diminished if he was removed from the United States.

In her statement the Applicant's spouse describes the positive impact the Applicant has had on her life. She claims that because she is depressed it is hard for her to properly care for her daughter, whose father has been absent from her life. The Applicant helps by preparing lunch for her every day, helping with homework, and taking care of her after school. In addition, the Applicant assists his step-daughter with asthma treatments when his spouse is not available. The Applicant also does household chores, such as laundry and grocery shopping. If he were to be deported, his spouse would have to pay for household help and day care for her daughter, who cannot be left unattended because of the asthma. However, the Applicant submits no documents to support these statements. The evidence includes a copy of his step-daughter's Delaware Emergency Treatment Card for the school year 2014-2015, signed by the Applicant's spouse on September 4, 2014. In addition to the Applicant and his spouse, the form lists three other individuals who may be contacted in case of emergency: the step-daughter's grandmother, aunt, and an individual who is the Applicant's joint sponsor in his adjustment of status proceeding. The fact that the Applicant's mother-in-law and sister-in-law are listed on the recent school emergency form seems to contradict his spouse's

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statement that she cannot rely on her family members in caring for her daughter. The Applicant does not explain where the spouse's relatives reside and whether they are available and able to help care for his step-daughter when she is not in school. The Applicant does not address the cost of afterschool care for his step-daughter, and he does not explain how this additional expense would affect the Applicant's spouse's financial situation.

The Applicant's spouse further states that she purchased a house in December 2014 that is a "fixer-upper," and she cannot afford to hire help to make the improvements required to avoid citations for local ordinance violations. The Applicant's spouse states that she purchased the house at a low price because of the extensive repairs that it needed. Although she was not able to include the Applicant on the mortgage¹, she relies on him to work on repairing the house to save the money she would otherwise have to spend on hiring carpenters, painters, plumbers and other workers. In support of this statement, the Applicant submits a copy of a settlement statement (HUD-1), a copy of the mortgage billing statement dated on May 15, 2015, and copies of his spouse's two earning statements.

The record reflects that the Applicant's spouse decided to purchase the house after she and the Applicant had been advised in the Director's July 24, 2014, request for evidence that the Applicant was inadmissible to the United States and ineligible to adjust status to that of a permanent resident of the United States. Accordingly, it appears that the Applicant's spouse could have reasonably known when she bought the house that it might not be possible for the Applicant to remain with her in the United States. The submitted settlement statement (HUD-1) shows that the Applicant's spouse purchased the house with a [REDACTED], indicating that she and [REDACTED] are jointly responsible for making monthly payments of \$1,264.64 on the mortgage loan. The Applicant's spouse's earning statements show that she is currently employed by the [REDACTED] and that she makes between \$498.64 and \$530.24 bi-weekly. In addition, the Biographic Information Form G-325A submitted by the Applicant's spouse in connection with the petition she filed on his behalf shows that as of the date of the Applicant's adjustment interview, July 13, 2013, she claimed additional employment as a certified nursing assistant at [REDACTED] Delaware. No documentation of the spouse's income from this employment has been submitted. The Applicant's spouse does not assert that she will experience financial hardship as a result of loss of income from the Applicant, should his waiver request be denied. Rather, she claims that she will have to incur additional expenses if the Applicant is not in the United States to take care of her daughter and make repairs to the house. Again, the Applicant submits no documentation to support his spouse's claims of future financial hardship, such as cost of daycare for her daughter or the estimated cost of home repairs. Although the Applicant's spouse's assertions regarding her financial hardship are relevant and have been taken into consideration, in the absence of supporting evidence, we can afford them little weight. *See Matter of Kwan*, 14 I&N Dec. 175, 177 (BIA 1972) ("Information in an affidavit should

¹ The Applicant's spouse does not explain why she was not able to include the Applicant on the mortgage documents.

² The record does not include an explanation of [REDACTED] relationship to the Applicant or his spouse. However, the settlement statement shows that the Applicant's spouse signed the document on behalf of [REDACTED] as his Attorney in Fact.

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not be disregarded simply because it appears to be hearsay. In administrative proceedings, that fact merely affects the weight to be afforded such evidence, not its admissibility.”)

In this case, the record does not contain sufficient evidence to show that the hardships faced by the Applicant’s spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We find, therefore, that the Applicant did not 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 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.

Cite as *Matter of G-A-F-*, ID# 15561 (AAO Dec. 10, 2015)