



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: FEB 06 2015

OFFICE: ATLANTA

FILE: [REDACTED]

IN RE: [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:

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 was dismissed on September 5, 2014, noting that the applicant had not filed a brief or additional evidence at the time of the decision. However, the record indicates that the applicant filed a brief and additional evidence on June 6, 2014. Accordingly, the applicant's appeal and additional supporting documentation will now be considered on service's motion to reopen.

The applicant is a native and citizen of Jamaica who 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), for procuring an immigration benefit by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and stepchildren.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative upon denial of the applicant's waiver application and denied the application accordingly. *See Decision of the Field Office Director*, dated April 7, 2014.

On appeal, counsel for the applicant asserts that the applicant's spouse and stepchildren would experience extreme emotional and financial hardship upon separation from the applicant. Counsel further asserts that the applicant's spouse cannot reside with the applicant in Jamaica because she would leave behind her own ties in the United States and her children's biological fathers would not consent to their relocation.

In support of the waiver application and appeal, the applicant submitted identity documents, an affidavit in support of the applicant, an affidavit from the applicant's spouse, a letter from the applicant's stepdaughter, medical records for the applicant's stepchildren, family photographs, financial documents and background country conditions concerning 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...

The record reflects that the applicant submitted a Form DS-156, Nonimmigrant Visa Application, signed August 31, 2006, indicating he was married to [REDACTED]. The applicant was subsequently granted a B1/B2 visa and entered the United States pursuant to this visa. On June 3, 2011, the applicant's current spouse filed a Form I-130, Petition for Alien Relative, on his behalf, indicating that the applicant was previously married on only one occasion, to [REDACTED]. The applicant submitted a form G-325, Biographic Information, stating that his marriage to [REDACTED] began on July [REDACTED]. On September 30, 2011, the applicant signed a sworn statement stating that, aside from his current marriage, he had been married only one time. Accordingly, the applicant misrepresented his marital status upon submission of his Form DS-156.

Counsel asserts that though the applicant acknowledges his misrepresentation, the misrepresentation is not material in nature. Counsel contends that the applicant's Form I-601 denial decision failed to demonstrate that the applicant would not have received the visa if he had not made the misrepresentation. By failing to disclose that he was single, the applicant cut off a line of inquiry that was relevant to his eligibility for a visitor visa. As the applicant's misrepresentation tended to shut off a line of inquiry that could have affected the outcome of the decision on his Form DS-156 application, his misrepresentation was material. Further, there exists no requirement of an affirmative finding that the consular officer would not have approved the applicant's nonimmigrant visa if the applicant were truthful. It is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring a visa through fraud or 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. 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*, 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.

The record reflects that the applicant is a 36-year-old native and citizen of Jamaica. The applicant's spouse is a 40-year-old native and citizen of the United States. The applicant is currently residing with his spouse and stepchildren in [REDACTED] Georgia.

Counsel for the applicant asserts that in the absence of the applicant, the applicant's spouse would suffer extreme hardship, as she would be the only financial provider for her family. Counsel contends that the applicant's family business would fail without him and that it is unlikely the applicant could secure employment in Jamaica. As such, counsel asserts that the applicant's spouse would be responsible for financially providing for her children and the applicant. The applicant's spouse asserts that before her marriage to the applicant, she was a struggling single mother in financial debt, borrowing money and receiving government assistance. The applicant's spouse also asserts that as she and the applicant now own a business, [REDACTED] she no longer styles hair and can work in the business as she wants.

The applicant submitted a Form G-325, Biographic Information, signed August 10, 2009, indicating that he was employed by [REDACTED] Jamaica, from 2005 to 2008. Accordingly, the record demonstrates that the applicant was capable of securing employment during his residence in Jamaica and there is no indication that he would be unable to obtain employment upon his return.

The record reflects that the applicant's spouse was previously employed as a hairstylist. The most recent tax document for the applicant's spouse's income alone, from 2010, indicates a total income of 14,672 dollars, a total income of 15,310 in 2009 and a total income of 15,420 in 2008. A 2013 tax record for the applicant and his spouse, jointly, reflects a total income of 15,528. Accordingly, the record indicates that the applicant's spouse's earning ability alone nearly equates the current income of her household including the employment of both the applicant and his spouse. The record also does not contain a monthly accounting of household financial income and obligations with supporting documentation. The record is insufficient to determine that the applicant's spouse would suffer from financial hardship in the absence of the applicant. 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)).

Counsel for the applicant asserts that the applicant and his spouse are raising the applicant's spouse's children and have grown and supported one another for years. Counsel also contends that if the applicant's spouse returns to her former employment as a hairstylist, she will no longer be on hand to monitor her children in the event of asthma attacks. The applicant's spouse asserts that the applicant is essential to both her and her children. The applicant's spouse contends that the applicant's immigration concerns have caused her headaches, stress and anxiety, so that she is unable to function normally and she has been forced to seek professional help. The applicant's spouse asserts that her children have a father in the applicant and, in the absence of the applicant, she would not have the ability to spend quality time with her daughter.

It is initially noted that the applicant's spouse's children are not qualifying relatives in the context of this application so that any hardship they would experience will be considered only insofar as it affects the applicant's spouse. The record does not contain any supporting medical or psychological documentation concerning the applicant's spouse, including any professional help

sought. The record contains affidavits of support asserting that the applicant's spouse has stated that she feels anxious, stressed and depressed. It is noted that the two affidavits of support submitted in the record are six pages of identical type, aside from the printed names and addresses of each affiant.

The record contains medical documentation concerning the applicant's spouse's children, largely consisting of medical notes. The record does not contain a clear explanation of the current medical conditions of the applicant's spouse's children. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would suffer hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer extreme hardship upon separation from the applicant.

Counsel for the applicant asserts that the applicant's spouse cannot relocate to Jamaica, as she has extensive ties to the United States, including her family and friends. It is acknowledged that the applicant's spouse is a native of the United States. As noted, the record contains two affidavits of support from individuals residing in the United States, stating that they are friends with the applicant and his spouse.

Counsel for the applicant asserts that the applicant's spouse's two children would be unable to relocate to Jamaica with her, as neither of her children's biological fathers has given permission for them to reside outside the United States. As such, counsel contends that the applicant's spouse is not legally allowed to take her children outside the United States. The record does not contain any supporting legal documentation for this assertion, including finalized custody agreements concerning the applicant's spouse's children.

Counsel asserts that the applicant's spouse, upon relocation to Jamaica, would face violent crime, limited medical care and inferior living standards. The record contains background country condition information concerning Jamaica stating that violent crime is particularly a serious problem in [REDACTED] and other major tourist areas, with the vast majority of crimes occurring in impoverished areas. The applicant indicated on his Form G-325 that his mother resides in [REDACTED], Jamaica. There is no indication as to whether the applicant would relocate to [REDACTED] or the extent to which his relatives could and would assist in his relocation. The Department of State has not issued any travel warnings for U.S. citizens concerning Jamaica. Further, the record does not contain any medical documentation for the applicant's spouse indicating any current or ongoing medical ailments that necessitate care.

There is insufficient evidence in the record to show that the hardships faced by the applicant's spouse, in the aggregate, would rise to the level of extreme hardship if she relocated to Jamaica.

Although the depth of concern over the applicant's family's circumstances is neither doubted nor minimized, the fact remains that a waiver of inadmissibility is available only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, a waiver of inadmissibility is available only in cases of extreme hardship and not in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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. We therefore find 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 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.