

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **JAN 20 2015** Office: WEST PALM BEACH

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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, West Palm Beach, Florida, 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 citizen of Haiti who 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 attempting to procure admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, January 14, 2013.

The applicant asserts that he provided sufficient evidence to show that extreme hardship to his wife would result from his inability to remain in the United States. In support, he offers his wife's statement on the Form I-290B. The record contains documentation including: copies of birth, divorce, marriage, and naturalization certificates; financial information; prior benefits applications; records of an asylum proceeding, a removal order, and related documents; his own hardship statement; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

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

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)(1) of the Act provides:

The [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 reflects that the applicant attempted to procure admission on December 13, 2002 using the altered passport of another person and a fraudulent permanent resident card and was placed into removal proceedings. An immigration judge denied his asylum claims and ordered him removed. The applicant does not dispute that he is inadmissible under section 212(a)(6)(C) of the Act for fraud and misrepresentation and thus requires a waiver of inadmissibility.

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 or the applicant's step-children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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-Moralez*, 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 v. INS*, 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.

Regarding the qualifying relative's hardship should she relocate abroad, the applicant provides little evidence that relocating to Haiti would impose on his wife hardship beyond the inconvenience associated with moving overseas. However, the applicant's wife lists ways in which her husband will suffer hardship by moving to Haiti, safety concerns in particular, that we note also apply to her. The record reflects that she was born in Port-au-Prince and lived in Haiti as a child and has lived in the United States for over 25 years, becoming a permanent resident in 1990 and a U.S. citizen in 1996. The U.S. Department of State (DOS) has cautioned U.S. citizens about the security situation in Haiti and the lack of emergency services there. Although official reporting notes that kidnappings of U.S. citizens decreased from 60 in 2006 to one in 2014 and hundreds of thousands of U.S. citizens visit the country every year, DOS states that living conditions are difficult, many areas are off-limits to U.S. embassy staff, violent crime is not uncommon, and U.S. citizens of Haitian descent have been targeted because viewed as having resources. *See Country Information—Haiti*, DOS, November 24, 2014; *see also Haiti Travel Warning*, December 4, 2014.

The recent travel warning and country information indicate that returning to Haiti will expose the applicant's wife to an uncertain security situation, and she states she is concerned for the safety and well-being of her and her two U.S. Citizen children there. Considering the entire record, based on a totality of the circumstances, we conclude the applicant's wife would suffer extreme hardship were she to relocate abroad to reside with the applicant.

Regarding hardship due to separation, the applicant is unable to meet his burden of establishing that the impact of his absence upon his wife would rise to the level of extreme. There is no documentary evidence she has any health condition that her husband's departure will cause to worsen or for which she requires care or treatment that only he may provide. Further, as the applicant's step-children are not qualifying relatives, hardship to them is only relevant to the extent it causes hardship to the applicant's wife. We note that the applicant and his wife married in September [REDACTED] the record fails to provide details about her children besides their status as U.S. citizens, and there are no statements from them regarding their relationship with the applicant or with their biological father. There is no evidence that the applicant's wife's children will experience such hardship from their step-father's absence as to result in extreme hardship to their mother. Although sensitive that the applicant's

return to Haiti will entail a degree of hardship to his wife, there is nothing on record to show that she will experience hardship beyond the common or usual consequence of family separation.

Regarding possible financial hardship, the record reflects that the qualifying relative's annual earnings exceeded \$50,000 in 2011, her final year as a single filer, after she had reported income of \$58,000 in 2010 and nearly \$43,000 the previous year. In 2012, she and the applicant filed a joint federal tax return reporting income of \$33,000. Even if the applicant's contribution to household income is removed, there is no evidence his wife would be unable to pay her bills, including a mortgage listing her as the sole obligor. There is no financial documentation addressing the qualifying relative's expenses or showing she depends upon the applicant to help her pay the expenses of daily living. Nor is there evidence of the applicant's living expenses in Haiti or that he would be unable to support himself. Going on record without supporting documentary evidence for the claim being made 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)). Rather than establish that the applicant's wife depends on the applicant for financial support, the record indicates that the qualifying relative was self-sufficient before marrying the applicant and fails to show she has ceased to be the primary wage earner of the household.

Based on the record, there is no indication that the applicant's departure will make his wife unable to meet her financial obligations or cause her economic harm. Therefore, while sensitive that her husband's departure will cause her some emotional hardship, we conclude that this represents a typical consequence of removal or inadmissibility. Further, there is no evidence that the applicant's absence will cause such hardship to his wife's children so as to result in extreme hardship to their mother.

For all these reasons, while we recognize that the applicant's absence would cause hardship to his wife, there is insufficient evidence that the cumulative effect of the emotional and financial hardships to her due to her husband's inadmissibility would rise to the level of extreme. We conclude based on the evidence provided that, were she to remain in the United States without the applicant due to his inadmissibility, she would not suffer hardship beyond those problems normally associated with family separation.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, see also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The documentation on record, when considered in its totality, reflects the applicant has not established that his wife would suffer extreme hardship if the applicant cannot remain in the United States. The record demonstrates that she faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a family member is removed from the United States or refused admission. Although we are not insensitive to the qualifying relative's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law. Having again found the applicant statutorily ineligible for relief, no purpose would be served in discussing 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.