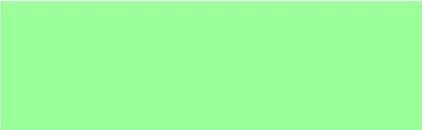




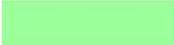
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAR 02 2015**

Office: NEW YORK

FILE: 

IN RE:

Applicant: 

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

The record reflects that 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 procuring 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 with his U.S. citizen spouse.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated March 3, 2014.

On appeal, the applicant asserts that the hardships to his spouse if the waiver application is denied, when considered in the aggregate, would result in extreme hardship to his spouse and submits additional evidence of hardship to his spouse.

The record includes, but is not limited to, the following documentation: statements by the applicant and the applicant's spouse, a psychological evaluation for the applicant's spouse, medical documentation for the applicant's spouse, financial documentation, letters of reference, and country conditions information on Haiti. The entire record was reviewed and considered in rendering 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.

The record indicates that the applicant entered the United States on or about August 27, 2004 using the passport and identity of another person. He applied for asylum in the United States using the false identity on January 11, 2005 and his case was referred to an immigration judge, who ordered the applicant removed on May 17, 2006. The applicant does not contest his inadmissibility under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides, in pertinent part:

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. . . .

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 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 (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 contends that his spouse will suffer medical hardship if the waiver is not approved, indicating that she had surgery for fibroids and suffers from anemia and thyroid problems. The record includes medical documentation for the applicant's spouse indicating that she underwent surgery for symptomatic uterine fibroids in 2006. Medical documents further indicate that the applicant's spouse suffers from iron deficiency anemia and is currently taking oral iron supplements. With respect to the thyroid problems of the applicant's spouse, medical documentation in the record indicates that the applicant's spouse received a thyroid ultrasound examination in 2008, which revealed a large right lobe of thyroid with nodules. There is no more recent medical documentation in the record to indicate the current status of the thyroid problems of the applicant's spouse. Without more detailed information on the current medical condition of the applicant's spouse, we are not in the position to reach conclusions concerning the nature and severity of any medical condition or any necessary treatment and assistance. The record fails to establish that the applicant's spouse would be unable to take care of her medical conditions in the absence of the applicant.

The applicant also contends that his spouse will suffer from financial hardship if the waiver application is not approved. The record indicates that the applicant's spouse is employed as a medical assistant and has been employed with a doctor in [REDACTED] New York since August 21, 2009. A letter in the record dated April 3, 2013 indicates that her gross monthly salary is \$1,336.00, and a 2011 joint income tax return and Form W-2 submitted with Form I-864, Affidavit of Support, indicates that the applicant's spouse annual income was \$21,976. The record further indicates that the applicant's spouse also has student loans which she has an obligation to repay. As noted in the Director's decision of March 3, 2014, there is no indication in the record that these loans are burdensome to her beyond the level experienced by many students. The evidence in the record is insufficient to conclude that the qualifying spouse would be unable to meet her financial obligations in the applicant's absence.

The applicant further contends that his spouse will experience psychological hardship if the waiver application is not approved. On appeal, the applicant submits a psychological evaluation for the applicant's spouse which indicates that she suffers symptoms of major depressive disorder, including

insomnia, low appetite, sad mood, difficulty concentrating, social withdrawal, and irritability. Although we are sympathetic to the family's circumstances and recognize that the input of any health professional is respected and valuable, the record does not show that the hardship to the applicant's spouse, and the symptoms she has experienced, are extreme or atypical compared to others separated from a spouse.

The documentation on the record indicates that the applicant's spouse will suffer from some hardships if she is separated from the applicant. However, the record lacks sufficient evidence demonstrating that the hardships to the applicant's spouse or other impacts of separation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, such that the applicant's wife would experience extreme hardship if the waiver application is denied and she is separated from the applicant.

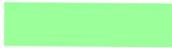
The applicant contends that his spouse will suffer hardship if she were to relocate to Haiti as she will find it difficult to get care for her medical conditions due to the inadequacy of the health system, and he submits country-conditions information on Haiti showing the problems of obtaining adequate health care. On December 14, 2014, the U.S. Department of State updated its travel warning for Haiti to inform U.S. citizens traveling to or living in Haiti about the lack of adequate emergency medical facilities as well as the problematic security environment in Haiti. *See Travel Warning-Haiti, U.S. Department of State*, dated December 14, 2014.

Furthermore, Department of Homeland Security (DHS) Secretary Jeh Charles Johnson determined that TPS for certain Haitians was warranted because of the earthquake and aftershocks of January 12, 2010, and extended this designation through January 22, 2016. The Secretary's decision to extend TPS noted that Haiti experienced "extensive damage to infrastructure, public health, agriculture, transportation, and educational facilities" as a result of the earthquake, and over one million Haitians "were left homeless and living in temporary camps." "The earthquake devastated much of Haiti's health infrastructure and exacerbated the already poor state of health care in the country where 40 percent of the Haitian population had no access to basic health services." Given the unsafe living conditions, damaged infrastructure, and the shortage of permanent shelter, the Secretary determined it is unsafe for Haitians currently in the United States with TPS to return to Haiti. *See Notice of Extension of the Designation of Haiti for Temporary Protected Status*, 79 Fed. Reg. 11810 (March 3, 2014). We note that the applicant was granted Temporary Protected Status on July 13, 2010.

Based on the current conditions in Haiti, the applicant has established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Haiti to reside with the applicant.

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,

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886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining 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.*, also *cf. 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.

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.