



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

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

MATTER OF L-M-L-

DATE: NOV. 2, 2015

APPEAL OF QUEENS FIELD OFFICE DECISION

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

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

The Applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure a benefit under the Act through fraud or material misrepresentation. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative that his U.S. citizen spouse filed on his behalf. The Director found 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.

On appeal, the Applicant asserts that the Director did not take into account his U.S. citizen spouse's ties to the United States, her lack of ties to Trinidad and Tobago, the financial impact of departure, and the serious health conditions of the Applicant's spouse and child.

The record includes, but is not limited to: identity and relationship documents, declarations of the Applicant's spouse, a brief, financial records, and medical records. The entire record was reviewed and considered in rendering this decision.

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.

The record indicates that the Applicant entered the United States on October 16, 2001, as a nonimmigrant visitor. On or about August 18, 2010, the Applicant submitted a fraudulent birth certificate and a fraudulent Form I-797, Notice of Action, concerning an approved family petition with his Form I-485 Application to Register Permanent Residence or Adjust Status. At his

adjustment interview, he stated that he hired a man who filed his application on his behalf and that he did not know that this man had submitted falsified documents with the Form I-485 application. On appeal the Applicant does not contest the Director's finding of inadmissibility under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act, which provides a waiver for fraud and material misrepresentation, 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 Applicant is eligible to apply for a waiver of inadmissibility pursuant to section 212(i) of the Act. In order to qualify for this waiver, he must first prove that the refusal of his admission to the United States would result in extreme hardship to a qualifying relative. The Applicant's only qualifying relative is his U.S. citizen spouse. If extreme hardship to a qualifying relative is established, the Applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services 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 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 contains references to hardship the Applicant and the Applicant’s child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant or an applicant’s children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the Applicant’s spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the Applicant and his child will not be separately considered, except as it may affect the Applicant’s spouse.

The Applicant’s spouse, a native of Trinidad and Tobago, asserts that she will suffer medical, financial and emotional hardship if she relocates to Trinidad and Tobago. The Applicant’s spouse states that she has been diagnosed with thalassemia, hypertension, anxiety, and high cholesterol.

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In support of her assertions, she submits a fact sheet on thalassemia and progress notes from a doctor's visit she had on July 2, 2014, including lab results. The Applicant submits no other medical records to reflect a diagnosis by a healthcare professional of his spouse's medical conditions.

The Applicant's spouse asserts that their youngest daughter, age [REDACTED] was born with a congenital heart defect and she may require surgery. The Applicant submits copies of medical progress notes from their daughter's doctor, which show that she is not receiving medical treatment for the condition or exhibiting signs of distress or other problems, but she needs to follow up on an annual basis. The Applicant's spouse expresses concern about her ability to obtain adequate healthcare in Trinidad and Tobago, for herself and their daughter. She also asserts that her health conditions will worsen there, because of the effects of stress caused by relocating to another country. The Applicant does not submit documentation addressing the quality and availability of suitable healthcare in his home country.

The Applicant's spouse states that she has a second daughter from a prior relationship and that if that daughter accompanied them to Trinidad and Tobago, it would affect the daughter's relationship with her biological father. The record contains the Applicant's spouse's amended judgment of divorce that indicates that she and her former spouse were awarded joint custody of their daughter. The record does not indicate whether the biological father of the Applicant's spouse's second daughter would allow his daughter to relocate to Trinidad and Tobago or if he would be willing or able to have full physical custody of his daughter. The record does not give a full picture of the hardship that the Applicant's spouse may experience as a result of relocating with, or separating from, her daughter.

The Applicant's spouse asserts that relocating to Trinidad and Tobago would disrupt her work and her education. She states that she works on a part-time basis and attends school. The Applicant does not provide information about employment and educational opportunities in Trinidad and Tobago. The record, moreover, lacks evidence to corroborate claims that his spouse is attending school and that she is employed. 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)).

The Applicant's spouse also states that she has lived in the United States for 20 years and relocation would cause her hardship. She states that although she has siblings in Trinidad and Tobago, they have become distant, and all of her close family ties are in the United States. She asserts that she has one brother in the United States and that her parents are deceased. According to the medical documentation in the record, however, she has a large extended family.

Although the Applicant's assertions have been taken into consideration, insofar as they affect the hardship to his qualifying relative, 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.”). We recognize that the Applicant’s spouse is likely to experience some hardship due to the fact she has resided in this country for two decades. However, the evidence is insufficient to establish that she would experience hardship that considered in the aggregate, amounts to extreme hardship.

The Applicant’s spouse asserts she will suffer financial, medical, and emotional hardship if she is forced to separate from the Applicant. She asserts that she relies on the Applicant and his employment makes it possible for her to care for their daughters and to pay healthcare expenses. The record contains a copy of a Form 1040, filed by the Applicant and his spouse, indicating that their total income in 2011 was \$24,564. The Applicant did not provide any W-2 forms, however, he did provide another Form 1040, indicating that his spouse earned \$22,000 alone in 2011. The documentation does not indicate that the Applicant provides a large portion of the household income. The Applicant provides no corroborating evidence to demonstrate that he financially supports his family.

The Applicant’s spouse states that if she and their daughter need intensive medical treatment, she will need the Applicant for emotional support. She states that having to manage their daughter’s medical condition alone would be a hardship. She further states that the Applicant is her best friend and she relies upon him. The Applicant’s spouse states that she and the Applicant want to give their children the best education and medical care possible, but that goal would be thwarted if the Applicant is removed.

Although the Applicant’s spouse’s emotional concerns about being separated from the Applicant are understandable and relevant to evaluating her hardship, the record lacks documentation to support that this hardship would amount to extreme hardship. We recognize the serious impact of separation on families in similar circumstances, 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 faced with a loved one’s 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.

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ORDER: The appeal is dismissed.

Cite as *Matter of L-M-L-*, ID# 12798 (AAO Nov. 2, 2015)