



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

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

MATTER OF E-N-S-

DATE: NOV. 19, 2015

APPEAL OF NEW HARTFORD 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 Field Office Director, New Hartford, Connecticut, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant is the beneficiary of an approved Form I-130, Petition for an Alien Relative, filed on her behalf by her U.S. citizen spouse. She was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C). In a decision, dated February 2, 2015, the Director concluded that the Applicant had not established that her qualifying spouse would suffer extreme hardship as a result of her inadmissibility and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the Applicant asserts that the denial of her application would result in extreme hardship to her qualifying spouse because of his emotional and physical health, the health of their son, and financial reasons.

The record includes, but is not limited to: a brief; a statement from the qualifying spouse; documents establishing identity and relationships; medical records; school records of the Applicant's son; a mental health assessment of the qualifying spouse; immigration documents; excerpts from reports on conditions in Jamaica; letters attesting to the Applicant's good moral character; and financial documents. The entire record was reviewed and considered in rendering a decision on 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.

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The record reflects that the Applicant tried to enter the United States on April 2, 2001, with a visitor's visa that had been altered. She was found to be inadmissible under section 212(a)(6)(C) of the Act, for seeking to procure admission by willfully misrepresenting a material fact. As a result, the Applicant was expeditiously removed and prohibited from entering the United States for a period of five years. The Applicant then obtained a visitor's visa in [REDACTED], Jamaica, on February 21, 2003, using a passport in her mother's name. She subsequently entered the United States using this fraudulent passport and visa on March 19, 2003; December 28, 2003; and on August 22, 2006. The Applicant concedes that she is inadmissible pursuant to section 212(a)(6)(C) of the Act. However, the Applicant is eligible to apply for a waiver of inadmissibility under section 212(i) of the Act.

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary 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.

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. The Applicant's only qualifying relative is her 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 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’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant’s children as a factor to be considered in assessing extreme hardship. 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 her children will not be separately considered, except as it may affect the Applicant’s spouse.

We will first address hardship if the Applicant’s spouse remains in the United States without the Applicant. In a declaration, the Applicant’s spouse states he lost his parents so he sees the Applicant as his only chance to have a family. He further states that the Applicant is a great mother to all of their children and that their youngest child was diagnosed as a special-needs child. The Applicant’s spouse relayed to a licensed clinical social worker (LCSW) that he fears if the Applicant returns to

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Jamaica, he would have to send her money, which would affect their ability to meet their responsibilities in the United States.

To corroborate his claims, the Applicant submits her spouse's medical records, indicating he was diagnosed in 2006 with focal disc extrusion. The Applicant's spouse states that he may require back surgery. Another record indicates that the Applicant's spouse saw a specialist in 2013 for abdominal pain. The Applicant submits an assessment prepared by a LCSW, who indicates that the Applicant's spouse is expected to undergo back and abdominal surgery soon, and anticipated a six month recovery period during which he would need to rely upon the Applicant for support and child care. The LCSW states that the Applicant's spouse has generalized anxiety disorder and single episode major depressive disorder. The Applicant's spouse reported symptoms including: feeling anxious, he is easily fatigued, is often irritable, and has difficulty concentrating and sleeping. He reported that he felt sad all the time, has no interest in doing anything and has lost weight without trying. The LCSW states that these symptoms are having a significant effect on the Applicant's spouse's daily functioning.

In regards to her son, the Applicant submits school records showing that in 2012, her son was assigned special education services but in 2013, he exited those services after attaining his educational goals. According to the LCSW, the Applicant's spouse reported he had been worrying excessively about the possibility that the Applicant would be returned to Jamaica and that he would be unable to adequately care for his children, given his 13-hour workdays. He is concerned that their son would regress in the Applicant's absence. If she leaves, he may have to cut back on his work hours so he could take care of the children. On the Applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, she indicates that she has four children but she only provides birth certificates for two children. The youngest was born in [REDACTED] and the eldest was born in [REDACTED]. When the Applicant filed a Form I-485, she submitted her spouse's financial records indicating that in 2012, he earned \$7,250.

The record reflects that the Applicant's spouse may experience emotional hardship due to separation from the Applicant. The evidence does not establish that the Applicant's son is currently receiving special education services or that her spouse is due to have surgery soon. The record contains insufficient documentary evidence of emotional, financial, medical or other types of hardship that, when considered in the aggregate, establishes that the Applicant's spouse would suffer extreme hardship upon separation from the Applicant.

We will now address hardship to the Applicant's spouse if he relocates to Jamaica with the Applicant. Neither the Applicant nor her spouse expressly states how relocation would affect the Applicant's spouse. The Applicant's spouse was born in Jamaica but is now a naturalized U.S. citizen. The Applicant submits a few introductory pages of reports on conditions in Jamaica, but the record does not show how this information would relate to hardship the Applicant's spouse may face upon relocation to Jamaica. This documentation does not substantiate the claims made by the Applicant's spouse concerning financial hardship upon the Applicant's relocation to Jamaica.

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It is reasonable to conclude that the Applicant's spouse would experience a degree of hardship if he were to relocate to Jamaica. However, the record includes insufficient documentary evidence of emotional, financial, or other types of hardship that, considered in the aggregate, establishes that the Applicant's spouse would suffer hardship rising to the level of extreme upon relocation to Jamaica.

The Applicant has not established extreme hardship to her 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 she 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 E-N-S-*, ID# 13599 (AAO Nov. 19, 2015)