



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

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

MATTER OF S-J-P-

DATE: OCT. 27, 2015

APPEAL OF NEW YORK DISTRICT 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 Acting 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 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 is the beneficiary of an approved Form I-130, Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse.

The Acting District Director found that the applicant had not established that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility and the waiver application was denied accordingly. *See Decision of the Acting Director* dated February 21, 2014.

On appeal, filed on March 21, 2014, and received by this office on March 6, 2015, the Applicant asserts that denying the wavier application was in error and that evidence establishes that her U.S. citizen spouse will incur hardship. With the appeal the Applicant submits affidavits from herself and her spouse, documentation that the Applicant was expecting twins, mental health documentation, employment and financial documentation, biographic documentation pertaining to the applicant and her family, and country information for 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 that:

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 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 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 or

The record reflects that the Applicant entered the United States on June 29, 2008, with a Q-1 cultural exchange visa. However, the record shows that on her Form DS-156, Nonimmigrant Visa Application, signed on April 6, 2008, the Applicant indicated that she was single, having never been married, and that no one had ever filed an immigrant visa petition on her behalf, when in fact she was married at the time to a U.S. citizen who had submitted a Form I-130, Petition for Alien Relative, on her behalf. The record further reflects that the Applicant told the interviewing consular officer that she had a child when in fact she had no children at that time. On appeal the Applicant does not contest the Acting District Director's finding that she is inadmissible for 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. 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,

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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. *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.

On appeal the Applicant states that she is the sole provider as her spouse has been unemployed since 2011 and depends entirely on her income as a home health aide. She maintains that with no college education it is difficult for her spouse to obtain a job and that he would be on public assistance, with no way to support himself without her.

In their affidavits of March 2014, the Applicant and her spouse list some of their expenses, note that they had been living together since 2009 although not married until [REDACTED] 2012, state that the Applicant's spouse has been unemployed since 2011 and is dependent on the Applicant to pay bills, and assert that if the Applicant were a permanent resident she could obtain a nursing degree and find a better job. They contend that the Applicant's spouse has had interviews for employment, but has

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not gotten a job. The Applicant also asserts that her spouse's daughter from a previous relationship stays with them every other weekend, and the Applicant buys food and clothes for her when she needs. The spouse states that he could not support their children without the Applicant, but with her he could provide child care.¹

A letter dated March 5, 2014, from the Applicant's employer indicates that she had been employed with [REDACTED] since September 11, 2013, at \$10 per hour. A psychological evaluation of the Applicant's spouse, dated January 15, 2014, states that the spouse indicated that he had been terminated from his employment following a dispute with a customer and that his unemployment insurance benefits had run out. A printout from the Social Security Administration for a query of March 5, 2014, shows no employment after 2011 for the spouse, but the report indicates the years requested were 1999 to 2011. There is no documentation submitted to the record showing that the Applicant's spouse had received unemployment benefits.

Financial documentation submitted to the record includes some billing statements, but there is no detail concerning their expenses, assets or liabilities to establish that the Applicant's spouse will experience extreme hardship were the Applicant to relocate abroad. Nor does the record establish that the Applicant would be unable to obtain gainful employment abroad that would permit her to assist her family financially. Although the Applicant and her spouse state that the spouse has been unemployed since 2011 and unable to find employment, the Applicant has not submitted any evidence to establish that her spouse is unable to obtain stable employment.

Although we recognize that the Applicant's spouse will experience some difficulty without the Applicant's financial contributions, there is insufficient evidence in the record to establish that without the Applicant's physical presence in the United States the Applicant's spouse will experience financial hardship which rises above what is common. Further, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The Applicant further states that she is having twins, so if she returns to Jamaica with their children, her spouse would suffer the emotional hardship of knowing three of them were struggling in Jamaica. The Applicant's spouse asserts that with high unemployment in Jamaica, the Applicant could not support herself, but he could not send money because he is not employed. The spouse maintains that if the Applicant returns to Jamaica with their children he would miss their upbringing, have no means by which to travel to Jamaica to visit them, and would suffer the hardship of not being part of their lives.

While the mental health documentation submitted by the Applicant indicates that the spouse suffers from anxiety and depressed mood, there is no further detail about the severity of his condition and

¹ A letter from a medical doctor dated March 5, 2014, indicates that the Applicant was expected to give birth on [REDACTED] but no subsequent information has been submitted to the record.

the effects on his daily life. The affidavits of the Applicant and her spouse and the report provided do not establish that the hardships the Applicant's spouse would experience are beyond the hardships normally associated when a spouse is found to be inadmissible. We recognize that the Applicant's U.S. citizen spouse would endure hardship as the result of separation from the Applicant, but the record does not establish that the hardships he would face, considered in the aggregate, rise to the level of extreme.

We also find that the record does not establish that the Applicant's spouse would experience extreme hardship if he were to relocate to Jamaica to reside with the Applicant due to her inadmissibility. The Applicant states that her spouse would be unable to work because of high unemployment in Jamaica, and the spouse states that he has been in the United States more than 22 years and no longer has any connection or family in Jamaica to help. The Applicant cites reports of high unemployment, poverty, high crime, public debt, and inflation.

The documentation submitted in support of the waiver application provides a general overview of economic conditions in Jamaica, but there is no indication that the Applicant and her spouse do not have transferable skills they could deploy in Jamaica. The evidence in the record does not support the claim that the Applicant's spouse would suffer economic hardship by relocating to Jamaica.

The Applicant and her spouse also assert that Jamaica is a dangerous country due to police corruption and drug cartels, that it is plagued with violence and high levels of crime, and that it is not safe. The Applicant cites country information that crime is a problem in Jamaica, and she and her spouse assert that people coming from the United States have been targeted for theft because there is a perception that U.S. residents are wealthy and come to Jamaica with money. The documentation provided describes generalized country conditions, and the record does not indicate how they specifically would affect the Applicant's spouse. The submitted country conditions information does not establish that the Applicant's spouse would be at risk of harm as a result of crime or other issues.

The Applicant and her spouse assert that Jamaica is lacking in medical care so they are concerned for their children, and they state that the Applicant has been diagnosed with Generalized Anxiety Disorder and fears being unable to get treatment in Jamaica because it must be paid out of pocket. The record does not establish the severity of any psychological or medical conditions that the Applicant's spouse or children have, or that they would be unable to obtain adequate care such that it would cause extreme hardship to the Applicant's spouse, the qualifying relative in this case.

The Applicant and her spouse state that the spouse's daughter from a previous relationship is in the United States, that she visits the spouse every other weekend, and that the daughter's mother is from Grenada and will not allow the daughter to go to Jamaica. The Applicant and her spouse contend that if the spouse relocates to Jamaica, it would mean a permanent separation from his daughter and he would give up being part of her life since he has no income to visit her or bring her to Jamaica for a visit, causing him extreme emotional hardship. The spouse also states that he has been in the

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United States for more than 22 years and that his mother and siblings are here, so by returning to Jamaica he would be separated from his family.

Other than a birth certificate of the spouse's daughter, the record contains no other evidence or detail of their relationship or any information from the mother to establish that the spouse would suffer extreme hardship by being separated from his daughter. There is also no evidence or detail of the spouse's other family members in the United States to support the assertion that separation from them would cause extreme hardship to the Applicant's spouse.

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 not established extreme hardship to her 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.

Cite as *Matter of S-J-P-*, ID# 13182 (AAO Oct. 27, 2015)