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

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

MATTER OF D-E-

DATE: SEPT. 28, 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 Haiti, 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 misrepresenting a material fact to gain admission into the United States. In a decision dated August 27, 2014, the Director found that the Applicant's evidence was insufficient to establish extreme hardship to a qualifying relative, and she denied the Form I-601, Application for Waiver of Inadmissibility, accordingly.

On appeal, the Applicant contends that the Director erred in finding her inadmissible under section 212(a)(6)(C)(i) of the Act, because her misrepresentation was not willful. Alternatively, the Applicant asserts that if she were inadmissible, she has established that her qualifying spouse would suffer extreme hardship if her waiver application were denied. She alleges that in denying the waiver application, the Director did not consider the relevant hardship factors in the aggregate.

The record includes, but is not limited to: identity and relationship documents, statements from the Applicant and her qualifying spouse, medical records, financial records; photographs, and reports on conditions in 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 reflects that on [REDACTED] 2005, the Applicant arrived at the airport in [REDACTED], Puerto Rico, and presented a fraudulent French passport in the name of [REDACTED] to gain admission into the United States. The Applicant was therefore found inadmissible under section

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212(a)(6)(C)(i) of the Act, for misrepresenting her identity and nationality. The Applicant contests the finding of inadmissibility on appeal.

The Applicant asserts that her misrepresentation was not willful, because she was unaware that her French passport was fraudulent; and her mother had obtained the passport on her behalf. In addition, the Applicant states that she was “an innocent and oblivious child when [she] entered the United States.” The record reflects that the Applicant entered the United States the day before she became [redacted] years old.

Willful misrepresentation does not require an intent to deceive, but instead requires only the knowledge that the representation is false. *See Parlak v. Holder*, 57 F.3d 457 (6th Cir. 2009) (citing to *Witter v. INS*, 113 F.3d 549, 554 (5th Cir. 1997); *see also Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995). “The element of willfulness is satisfied by a finding that the misrepresentation was deliberate and voluntary.” *See Mwongera v. INS*, 187 F.3d 323, 330 (3rd Cir. 1999).

Here, by presenting a French passport to a U.S. Customs and Border Protection officer, the Applicant acted deliberately and voluntarily. The record does not reflect, and the Applicant does not suggest, that her actions were involuntary. She asserts she was unaware that her passport was fraudulent, because she did not obtain it herself and did not receive it until just before she boarded her flight. Mere assertions are insufficient to meet her burden of proof. 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’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm’r 1972)). Pursuant to section 291 of the Act, she bears the burden of demonstrating by a preponderance of the evidence that she is not inadmissible. *See also Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978). Moreover, where the evidence for and against admissibility “is of equal probative weight,” the Applicant cannot meet her burden of proof. *Matter of Rivero-Diaz*, 12 I&N Dec. 475, 476 (BIA 1967) (citing *Matter of M--*, 3 I&N Dec. 777, 781 (BIA 1949)). With respect to her characterization of herself as “an innocent and oblivious child” when she was admitted, the Applicant appears to assert that, as a minor, she cannot be found to have acted willfully. However, she does not provide legal or factual support for her assertions. There is no statutory exception for minors to inadmissibility under section 212(a)(6)(C)(i) of the Act. Where a provision is included in one section of law but not in another, it is presumed that Congress acted intentionally and purposefully. *See In re Jung Tae Suh*, 23 I&N Dec. 626 (BIA 2003) (citing *Matter of Rodriguez-Rodriguez*, 22 I&N Dec. 991 (BIA 1999)). Unlike section 212(a)(6)(C)(i), two other grounds of inadmissibility in section 212(a) contain express exceptions for minors. An exception is provided under section 212(a)(2)(A)(ii)(I) of the Act for individuals who, prior to turning 18, committed a single crime involving moral turpitude more than five years prior to applying for admission. Also, individuals who are under 18 do not accrue unlawful presence pursuant to section 212(a)(9)(B)(iii)(I) of the Act. By comparison, section 212(a)(6)(C)(i) of the Act provides for the inadmissibility of “any alien” who commits fraud or willful misrepresentation of a material fact in an attempt to gain a benefit. The sub-clause does not include an age-based exception, and we cannot assume such an exception was intended. For this reason, the fact that the Applicant was age [redacted] when she made the material misrepresentations is not, by itself, enough to establish that she is not inadmissible.

Therefore, the Applicant is inadmissible under section 212(a)(6)(C) of the Act for procuring admission to the United States through fraud or misrepresentation. She 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 to the Applicant’s spouse if he relocates to Haiti. The Applicant’s spouse, a native of Haiti, states that Haiti has a crippled infrastructure and a weak and corrupt government; the country is crime-ridden; and he worries about the ongoing cholera epidemic. He further states that he does not know if he could return to Haiti given the severity of his medical conditions, including extremely limited vision in his right eye caused by a childhood injury, dizziness, frequent headaches, acid reflux, hypertension, and shoulder pain.

To support her spouse’s assertions of medical hardship, the Applicant submits medical reports, including a patient registration form dated May 7, 2014, an April 2014 referral to an ophthalmologist, and a medical-history questionnaire indicating he has a cataract and suffers from

hypertension. The record also includes the November 2012 results of a magnetic resonance imaging test taken after he sustained injuries in an accident on October 19, 2012, showing he sustained a tear in his right shoulder. In addition, the Applicant submits copies of physical therapy referrals for her spouse and documents showing that in June 2014, he was diagnosed with rhinitis, hypertension, and gastroesophageal reflux disease (GERD). He states he suffers from lingering back pain and residual nerve damage since his surgery; and he never recovered his full range of motion. The Applicant also submits reports describing the condition of Haiti's healthcare system and the cholera epidemic.

The Applicant's spouse also expresses concern about the quality of life their children would have in Haiti, particularly given the cholera epidemic and insufficient educational resources. According to her spouse, one of their children is developmentally delayed and requires speech therapy, which is unavailable in Haiti. He states that he would suffer additional anxiety knowing the hardships that their children would face. The Applicant submits evidence that one of their children is developmentally delayed and is enrolled in a governmental early intervention program.

The record reflects that the Applicant's spouse would experience extreme hardship if he relocated to Haiti. He has resided in the United States since 2004 and became a U.S. citizen in 2011. Given the state of the medical infrastructure in Haiti currently, he would be deprived of basic health care. He has several chronic problems, such as hypertension and GERD, in addition to problems related to his vision and his mobility that could become more severe. The record reflects that few public medical facilities in Haiti have the resources to meet the needs of most Haitians, and the existing facilities are inadequate. Country-conditions reports show Haiti is at the bottom of the World Bank's rankings of health indicators, based on its deficient sanitation systems, poor nutrition, and inadequate health services. The Applicant's spouse's concerns about Haiti's infrastructure, weak government, and high crime rate also are corroborated by the U.S. Department of State's 2015 travel warning for Haiti. Based on the totality of the hardship factors presented, we find that the Applicant's spouse would experience extreme hardship if he relocated to Haiti to be with the Applicant.

We will now address hardship to the Applicant's spouse if he remains in the United States and is separated from the Applicant. The Applicant's spouse asserts that because of his dizzy spells and eyesight issues, he relies upon the Applicant to take him to and from work and to medical appointments. He adds that he does not know how he would survive without her, because he relies on her for emotional support and to care for their children. In addition, he states that if the Applicant left their children in his care, he would not be able to be their caregiver, because he works full-time. He also asserts that he would experience financial hardship if he had to support the Applicant and their children in Haiti.

As noted above, the Applicant's spouse has been diagnosed with rhinitis, hypertension, and GERD. While the Applicant's spouse describes problems with his vision, the medical evidence the Applicant submits, consisting of an ophthalmologist's report, does not establish that he cannot drive safely and relies on the Applicant to help him with his mobility.

To address issues of financial hardship, the Applicant's spouse asserts that he earns approximately \$2500 per month and the family's expenses are \$2000 per month. Her spouse itemizes some of the family's expense: \$1000 for rent, \$250 for telephone bills, \$300 for food, and \$200 for transportation. The Applicant provides documentation showing that in 2013, her husband earned approximately \$20,000, and she earned approximately \$3000; in 2012 her husband was the family's sole wage earner, earning approximately \$35,000. The Applicant provides no evidence to corroborate claims of the family's monthly expenses, and no evidence of costs her spouse would incur if he were to support her in Haiti.

On appeal the Applicant submits no additional evidence concerning her spouse's hardship as a result of their separation. The record reflects that the Applicant's spouse would experience emotional hardship due to separation from his family members and from the lack of comparable educational and healthcare resources for their children in Haiti. However, the record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, considered in the aggregate, establishes that he would experience extreme hardship if he were to remain in the United States in the event the Applicant is removed to Haiti.

We can find extreme hardship warranting a waiver of inadmissibility only where an Applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. 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.*, *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 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. 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 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 D-E-*, ID# 12303 (AAO Sept. 28, 2015)