



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

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

MATTER OF A-M-D-

DATE: APR. 15, 2016

APPEAL OF NEW YORK, NEW YORK 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 for fraud or misrepresentation. *See* Immigration and Nationality Act (INA, or the Act) § 212(i), 8 U.S.C. § 1182(i). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to lawful permanent residence must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to the self-petitioner or to a qualifying relative or qualifying relatives.

The Field Office Director, New York, New York, denied the application. The Director concluded that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. The Director then determined that the Applicant had not established that refusal of admission would result in extreme hardship to a qualifying relative. The Director further determined that the adverse factors did not outweigh the positive factors.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and asserts that his qualifying relatives would experience extreme hardship if they remained in the United States without him or relocated abroad.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for a fraud or misrepresentation, specifically for procuring admission into the United States by presenting a passport containing an altered nonimmigrant visa. Section 212(a)(6)(C)(i) of the Act states:

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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Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1), provides, in pertinent part:

(1) The [Secretary of Homeland Security] may, in the discretion of the [Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant, 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 of Homeland Security] 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.

Decades of case law have contributed to the meaning of extreme hardship. The definition of extreme hardship “is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists “only in cases of great actual and prospective injury.” *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984). An applicant must demonstrate that claimed hardship is realistic and foreseeable. *Id.*; see also *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was “no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent's parents by reason of their alleged physical defects”). The common consequences of removal or refusal of admission, which include “economic detriment . . . [.] loss of current employment, the inability to maintain one’s standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment,” are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); but see *Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* 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 the qualifying relatives would relocate). Nevertheless, all “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). Hardship to the Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

II. ANALYSIS

The only issue presented on appeal is whether the Applicant’s spouse or mother would experience extreme hardship if the waiver is denied, whether they remained in the United States without him or accompanied him to Jamaica. The Applicant does not contest the finding of inadmissibility for fraud or misrepresentation, a determination supported by the record.¹ The claimed hardships to the Applicant’s spouse from separation are loss of income and the emotional and psychological

¹ The record reflects that on [REDACTED] 2005, the Applicant procured admission into the United States at [REDACTED] Florida, by presenting a passport containing an altered nonimmigrant visa. He is therefore inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States through fraud or willful misrepresentation.

hardships of separation. The hardships asserted to the Applicant's mother are medical and emotional hardship. The Applicant's spouse and mother do not indicate whether they intend to relocate to Jamaica, however they claim that they would experience extreme hardship under either scenario. The evidence in the record, considered both individually and cumulatively, does not establish that the Applicant's spouse or mother would experience extreme hardship. The record does not contain sufficient evidence to establish the hardship claimed, and for the hardship shown, the record does not demonstrate that it is extreme. In the absence of a showing of extreme hardship, we will not address whether the Applicant merits a waiver as a matter of discretion.

A. Waiver

The Applicant must demonstrate that refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives, in this case the Applicant's spouse and mother. In support of his hardship claim, the Applicant submitted the following evidence. With the Form I-601, the Applicant submitted statements from himself and his spouse and mother. He also submitted copies of a psychological evaluation of his spouse, airline documentation, letters of support, tax and financial records, marriage and birth certificates, immigration documents, photographs, reports concerning conditions in Jamaica, and unpublished decisions.² On appeal, the Applicant submitted additional statements from himself and his mother. He also submitted copies of his mother's medical records, documentation from the Social Security Administration to the Applicant, and an unpublished decision.

The Applicant claims that if his spouse remains in the United States without him, she will suffer financial, psychological, and emotional hardship. The Applicant asserts that he and his spouse live with his mother because they cannot afford their own home. He states that they do not pay rent but still have bills and rely on his mother for help. The Applicant and his spouse state that he works at a restaurant and earns \$200 a week and that his spouse now works as a security guard earning \$300 a week. They assert that their living expenses are \$600 a month, they send at least \$140 a month to support the Applicant's children, and they struggle to pay immigration expenses. His spouse asserts that she worries that the Applicant will not be able to obtain gainful employment in Jamaica and that she will have to support not only herself in the United States but the Applicant and his children as well. She further states that she will worry that the Applicant will not be safe in Jamaica and that she will not be able to afford to visit him.

The record contains a copy of a 2014 joint tax return, employment checks for the Applicant, and his spouse's work schedule. Although the tax return shows wages, salaries, tips of \$16,718 for the Applicant's spouse, we cannot determine whether this reflects a full year's income. The work schedule contains no information about the Applicant's spouse's current salary. The record also contains copies of bank statements and utility and department store statements but these are addressed to the Applicant's mother. The record contains no documentation establishing the current household expenses of the Applicant and his spouse. The Applicant submitted reports on Jamaica

² Unpublished decisions are not binding. See 8 C.F.R. § 103.3(c).

and documentation about Jamaica for travelers. These documents indicate that crime is problematic in Jamaica and unemployment is 16.3 percent. This evidence does not contain information to establish that the Applicant specifically will be unable to obtain gainful employment abroad that would permit him to support himself. It does not establish that his physical safety will be at risk in Jamaica. The Applicant further submitted evidence of travel costs to Jamaica, but this is not enough to demonstrate that his spouse will be unable to visit him in Jamaica. “[G]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.” *In re Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Consequently, the record does not support a finding of financial hardship if the Applicant’s spouse remains in the United States.

As for emotional hardship, the Applicant’s spouse asserts that she had a difficult childhood and the Applicant is the only person who has provided her with consistent love and protection, and she constantly worries about separation from him. She maintains that they want to have children but have to postpone this until the Applicant obtains lawful immigration status in the United States. The Applicant submitted a psychological evaluation of his spouse from a licensed psychologist which states that she had a dysfunctional childhood, living apart from her mother during her childhood and adolescence, and that the Applicant provides emotional stability for her. The licensed psychologist further states that the Applicant’s spouse is anxious and depressed at the possibility of separation from the Applicant. The Applicant also submitted a statement from his mother affirming that the Applicant and his spouse have a close relationship.

We acknowledge that the Applicant and his spouse have a close relationship and separation would result in emotional hardship. We further acknowledge the evidence of the psychological evaluation. As we stated above, however, the record establishes that the Applicant’s spouse is gainfully employed. The Applicant has not established that she is unable to financially support herself. Nor has the Applicant established that his physical safety would be at risk in Jamaica. The record also does not establish that his spouse will not be able to visit him abroad. Furthermore, the Applicant and his spouse do not provide details about their plans to have children and this prospective emotional hardship is therefore not sufficiently foreseeable to be given significant weight in our analysis, though we have considered it in our evaluation of aggregate hardship. *See Matter of Shaughnessy, supra*. Considered together, the evidence does not demonstrate extreme emotional hardship to the Applicant’s spouse.

The Applicant’s mother asserts that she would experience financial and emotional hardship if separated from the Applicant. She states that the Applicant helps her by contributing to pay her rent and household expenses. She also declares that she has a degenerative knee and a torn ligament in her knee that requires surgery, and the Applicant helps her by carrying her up and down the stairs, preparing her meals, and doing her laundry. She asserts that she takes prescription medication and cortisone shots to manage pain. The Applicant submitted evidence of his mother’s medical conditions; however, the documentation states only that she has a derangement of her right knee and does not indicate the severity of her condition and whether she requires surgery. The February 2015 medical record indicates that she was referred to a therapist. Furthermore, the record indicates that his mother appears to be gainfully employed. Even though his mother states that she relies on the

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Applicant to assist financially and the Applicant provided a copy of her lease and household invoices, the record contains no evidence of his mother's income or his financial contributions to his mother. Furthermore, the Applicant states that his bills keep him financially strapped and he relies a lot on his mother for help. Consequently, the record does not support a finding of financial and emotional hardship if the Applicant's mother remains in the United States.

Based on a totality of the circumstances, we find that the record does not establish that the Applicant's spouse or mother will experience extreme hardship were they to remain in the United States while the Applicant relocates abroad.

With respect to relocation, the Applicant's spouse and mother claim that they would suffer hardship if they were to relocate to Jamaica. The Applicant's spouse and mother claim that they are emotionally close to their families in the United States and separation from them would result in emotional hardship. The Applicant's spouse also asserts that she has terrible memories of her life in Jamaica and will need, but will not be able to afford, professional help to cope with life in Jamaica. She also states that she worries about violence in Jamaica. The Applicant's mother asserts that she would suffer medical hardship from lack of adequate medical care in Jamaica. The Applicant submitted documentation on Jamaica for travelers, which states that medical services are primarily located in [REDACTED] and [REDACTED] doctors and hospitals often require cash payment, and providers may not adhere to U.S. standards. Although we acknowledge that medical facilities and services in the Jamaica are limited and may not meet U.S. standards, this does not establish that the Applicant's spouse and mother would not receive adequate psychological and medical care in Jamaica. The evidence in the record is not sufficient to ascertain the impact that a lower standard of medical care will have on the wellbeing of his spouse and mother. There is no evidence that the Applicant's spouse or mother has a serious medical condition. We acknowledge that conditions in Jamaica may not equal those to which the Applicant's spouse and mother are accustomed in the United States and that they would experience emotional hardship from separation from their family in the United States. However, we find that the evidence, considered individually and cumulatively, does not establish that his spouse or mother would experience extreme hardship in Jamaica.

Consequently, the record does not establish that refusal of admission would result in extreme hardship to the Applicant's spouse or mother if they remained in the United States or relocated to Jamaica.

B. Discretion

As the Applicant has not demonstrated extreme hardship to a qualifying relative or qualifying relatives, we need not consider whether the Applicant warrants a waiver in the exercise of discretion.

III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we dismiss the appeal.

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ORDER: The appeal is dismissed.

Cite as *Matter of A-M-D-*, ID# 15904 (AAO Apr. 15, 2016)