



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

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

MATTER OF G-W-

DATE: JAN. 6, 2016

APPEAL OF COLUMBUS 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 (INA, or the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Columbus, Ohio, denied the application. The matter is now before us on appeal. The appeal will be sustained.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission and for procuring admission to the United States by fraud or willful misrepresentation of a material fact. The Applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

In a decision dated April 29, 2013, the Director determined that the Applicant's spouse would not experience extreme hardship if the Applicant departed to Jamaica. The Director denied the Form I-601 accordingly.

On appeal, the Applicant asserts that his U.S. citizen spouse would experience extreme hardship if she remained in the United States without him or relocated to Jamaica. The record includes, but is not limited to, statements from the Applicant's spouse and children, medical records, a psychological evaluation, a social worker's statement, educational records, financial records, photographs, and country-conditions information on Jamaica. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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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Section 212(i) of the Act provides that:

- (1) The Attorney General [now 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 record reflects that on December 25, 2000, the Applicant attempted to procure admission to the United States at [redacted] Florida using an altered nonimmigrant visa. The record reflects that the Applicant was admitted to the United States at [redacted] New York on April 2, 2001 using a passport that was not issued in his name. The record reflects that the Applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for seeking to procure admission and for procuring admission to the United States through willful misrepresentation of a material fact. The Applicant does not contest this finding of inadmissibility.

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. Hardship to the Applicant, his child, and his spouse's children can be considered only insofar as it results in hardship to a qualifying relative, in this case the Applicant's 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 (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,

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.

We will first address hardship in the event that the Applicant's spouse remains in the United States without him. On appeal, the Applicant asserts that his household consists of his spouse and his spouse's two children from previous relationships. The Applicant states that his family depends on his income, and were he to relocate abroad, his spouse would experience difficulty in meeting the family's living expenses. The Applicant has an annual salary of \$39,000 per year, while his spouse has an annual income of approximately \$32,000. The record includes information on their monthly expenses.

The Applicant's spouse asserts that she has experienced several emotional upheavals in her life, including being a victim of sexual abuse as a young child, witnessing her mother's suicide attempt, and the deportation of her first husband. The Applicant's spouse asserts that her oldest child also has

been diagnosed as having a learning disability (tentatively diagnosed as SDL or Specific Learning Disability) and is enrolled in a special education program. The record includes an initial evaluation with SLD as a suspected disability, and a progress report. The Applicant's spouse states that she currently suffers from depression and bipolar disorder and has been taking medication for these conditions since 2011. The Applicant asserts that during times of significant depression, his spouse is non-functional and he must take care of the home and children. The Applicant's spouse asserts that due to the Applicant's immigration difficulties, she has been experiencing increased levels of stress and has been living in fear regarding his possible deportation. The Applicant's spouse was evaluated by a psychologist who diagnosed her as having Major Depressive Disorder, Recurrent, with episodes more brief while on antidepressant medication, but not fully controlled. The psychologist concludes that the Applicant's spouse would be at significant risk for more severe depression if she was separated from the Applicant and the negative effects of this depression would extend to her children. The record includes a letter from a social worker who states that the Applicant's spouse presented with symptoms including: crying spells, anger outbursts, nightmares, irritability, and depressive episodes. She diagnosed her with Bipolar Disorder II and Post Traumatic Stress Disorder. The record includes prescription records for the Applicant's spouse and a letter from a physician's assistant stating that she is being treated for Bipolar Disorder with multiple medications.

The Applicant's spouse's older child details her closeness to the Applicant and his involvement in her life as a father figure. The Applicant's spouse's younger child asserts that the Applicant is like a father to her.

The record reflects that the Applicant's spouse would experience significant financial hardship without the Applicant, as the Applicant's salary contributes to almost 60% of the household income. Furthermore, the record demonstrates that the stress caused by a separation would significantly affect the mental health of the Applicant's spouse. In addition, she would be raising her children without the presence and support of the Applicant. The record reflects that her children are close to the Applicant, and she would experience hardship based on their hardship. Considering the totality of the hardship factors presented, and the normal results of separation, we find that the Applicant's spouse would experience extreme hardship if she remained in the United States without the Applicant.

We will now address hardship in the event that the Applicant's spouse relocates to Jamaica. The Applicant's spouse asserts that she has been residing in the United States since birth. The Applicant's spouse contends that if she were to relocate to Jamaica, she would be forced to relocate her two U.S. citizen children as well, as they would not have the emotional and financial support they require without her. The Applicant's spouse's older child details her ties to the United States and the difficulty that relocating to Jamaica would cause. The Applicant's spouse asserts that as a parent, she is fearful of relocating to Jamaica with her children due to the high crime rate there. The Applicant's spouse also asserts that she does not believe that she would be able receive the psychological care that she needs or the educational support that her child with a learning disability needs, especially given the high unemployment rates in Jamaica. We note that the U.S. Department of State's country-conditions reports indicate that Jamaica currently has significant issues with crime

and safety issues. The country-conditions information also reflects that medical care is much more limited than in the United States.

The record reflects that the Applicant's spouse has been residing in the United States for her entire life. The record does not reflect that the Applicant's spouse has ties to Jamaica. If the Applicant's spouse were to relocate to Jamaica to reside with the Applicant, she would have to leave her community, the medical professionals familiar with her diagnosis and treatment plan, and her gainful employment. The record includes evidence that medical care is more limited in Jamaica than in the United States. The Applicant's spouse would be concerned for her safety and well-being, as well as the safety and well-being of her children in Jamaica. The record is not clear as to the severity of the Applicant's spouse's older child's learning disability and if she could receive assistance in Jamaica. However, based on a totality of the circumstances, the record establishes that the Applicant's spouse would suffer extreme hardship upon relocation to Jamaica.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the Applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

We note that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Morales*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin*, *supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin*, *supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

*Matter of Mendez-Morales* at 300.

In *Matter of Mendez-Morales*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives).

*Id.* at 301 (citation omitted).

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.*

The favorable factors include the Applicant's U.S. citizen spouse, extreme hardship to his spouse, his U.S. citizen child, his U.S. citizen step-children, hardship to the children, and his lack of a criminal record. The unfavorable factors include the Applicant's misrepresentations, unauthorized period of stay, and unauthorized employment.

We find that the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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 been met.

**ORDER:** The appeal is sustained.

Cite as *Matter of G-W-*, ID# 14976 (AAO Jan. 6, 2016)