



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

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

MATTER OF J-Y-L-

DATE: MAR. 16, 2016

APPEAL OF KENDALL FIELD 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 Field Office Director, Kendall Field Office, Miami, Florida, denied the application. The matter is now before us on appeal. The appeal will be sustained.

In a decision dated May 1, 2015, the Director found that the Applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission into the United States by fraud or willful misrepresentation. The Director concluded that the Applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, and the Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly.

On appeal, the Applicant asserts that his U.S. citizen spouse would suffer extreme hardship if he is not permitted to remain in the United States. In support, the Applicant submits a brief, medical records regarding his spouse, identity documents for himself and his family, a letter from his spouse, reference letters and certificates from his church and employers, family photographs, employment and financial records, and general articles about diabetes. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), provides:

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 the Applicant attempted to gain admission into the United States on February 17, 2002, by presenting a passport that contained a counterfeit stamp indicating permanent resident status. We find that the Applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for attempting to procure admission into the United States by fraud or willful misrepresentation. The Applicant does not contest this finding of inadmissibility.

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Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1), provides that section 212(a)(6)(C)(i) inadmissibility may be waived as a matter of discretion for

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 . . . that the refusal of admission . . . would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien, or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives. In this case, the qualifying relative is the Applicant's U.S. citizen spouse. 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).

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), but hardship "need not be unique to be extreme." *Matter of L-O-G-*, 21 I&N Dec. 413, 418 (BIA 1996). 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); *see also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (separation of family members and financial difficulties alone do not establish extreme hardship); *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).

The Applicant contends that his U.S. citizen spouse of five years would experience medical, financial, and emotional hardship if she were to relocate to Haiti with the Applicant as a result of his inadmissibility. The Applicant states that his spouse has struggled to recover from the [REDACTED] birth of their second child due to complications during her pregnancy, and she would be unable to obtain adequate medical care for her diabetes in Haiti. In support, the Applicant submits medical records, including a letter from his spouse's physician which describes her pregnancy as "high risk" due to first trimester bleeding and gestational diabetes. The Applicant also submits medical records documenting his spouse's delivery by cesarean section in [REDACTED] at which time she was also diagnosed with severe pelvic and abdominal adhesions and fibroid uterus. Additionally, the Applicant provides general articles discussing pregnancy and gestational diabetes, as well as an

article that describes the unavailability of many forms of medical care in Haiti. The Applicant notes that his spouse was prescribed the medication glyburide to help control her gestational diabetes, and further notes that this medication can cause numerous side effects. We note that the U.S. Department of State has issued a travel warning urging U.S. citizens to exercise caution when visiting Haiti due, in part, to the unavailability of medical care for serious health concerns and particularly weak, scarce, and sub-standard medical facilities.

In her letter, the Applicant's spouse also asserts that she would suffer financial hardship in Haiti, as jobs are unavailable. In support, the Applicant submits employment and tax records documenting the couple's combined incomes, which were approximately \$63,000 in 2014 and 2013. The Applicant submits paystubs establishing that he and his family obtain health insurance through his employer, and he also submits records establishing the family's car and mobile home ownership. A country conditions report indicates that Haiti is the poorest country in the Western hemisphere: 80% of the population lives under the poverty line, and 54% live in abject poverty. *See* CIA, *The World Factbook: Haiti*, <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html> (last updated Feb. 11, 2016). The report also states that unemployment exceeds 40%, and underemployment is also widespread. *Id.*

The Applicant also contends that his spouse would experience emotional hardship in Haiti. He states that his spouse has no family ties there, that she has lived in the United States for over ten years, that she fears for the well-being of their children if they move to Haiti, and that she suffered past persecution in Haiti, for which she was granted asylum in the United States. In support, the Applicant submits a letter from his spouse describing her concerns and fears about living in Haiti, in regard to both herself and to the hardships her children would suffer. She mentions the lack of educational opportunities and health care issues as sources of hardship to her children. The record reflects that the Applicant's spouse was granted asylum status in the United States. Additionally, the U.S. Department of State has issued a travel warning, discussed above, and generally notes that living conditions in Haiti are difficult and that the security situation is of concern.

In reviewing the Applicant's claims, we note that the medical articles submitted mention that gestational diabetes ends with delivery of the placenta for nearly all women who are diagnosed. The record does not include any indication of ongoing evaluation or diagnosis for diabetes or any other conditions since the Applicant's spouse delivered their child. In regard to the claimed side effects of taking glyburide, the Applicant does not claim, nor does the record establish, that his spouse has experienced any of these side effects. Furthermore, the medication form submitted on appeal indicates that the glyburide was stopped as of [REDACTED]. The letter from his spouse's physician, which was written approximately two months after his spouse gave birth, does not indicate that his spouse has suffered any other complications related to her pregnancy or delivery. However, we do note as a general source of hardship the poor state of medical facilities in Haiti. The record reflects that the Applicant's spouse would experience a significant decline in financial stability and economic well-being if she were to relocate to Haiti based on the evidence presented. The record also reflects that the Applicant's spouse would experience significant emotional hardship if she were to relocate to Haiti with the Applicant due to her past persecution there. In addition, we

note the general safety issues in Haiti, and that the Applicant's spouse would experience hardship based on hardship to their children. Based on the new evidence presented on appeal and the totality of the hardship factors, we find that the Applicant has established that his spouse would experience extreme hardship if he was refused admission to the United States.

We now consider whether the Applicant merits a waiver of inadmissibility as a matter of discretion. The burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 299 (BIA 1996). We must "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300 (citations omitted). In evaluating whether to favorably exercise discretion,

the factors adverse to the alien 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 the 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 alien began 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 or service in 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 (citations omitted). We must also consider "[t]he underlying significance of the adverse and favorable factors." *Id.* at 302. For example, we assess the "quality" of relationships to family, and "the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of [removal] proceedings, with knowledge that the alien might be [removed]." *Id.* (citation omitted).

The favorable factors in this matter are the Applicant's U.S. citizen spouse and two U.S. citizen children; extreme hardship to his spouse; hardship to his children; the Applicant's community ties; letters in support of the Applicant; the Applicant's gainful employment¹, for which he has received commendations; the Applicant's payment of taxes; the Applicant's apparent lack of a criminal record; and the Applicant's expressed remorse for his actions in violation of immigration law. We note that the Applicant married his spouse after he was placed in removal proceedings and we will weigh his positive factors accordingly. The unfavorable factors in this matter are the Applicant's

¹ The record reflects that the Applicant received employment authorization for most of his time employed in the United States.

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attempt to procure entry into the United States by willful misrepresentation; his [REDACTED] 2004 removal order; and periods of unauthorized stay and employment while in the United States. We find that the record establishes that the positive factors in this case outweigh the negative factors, and a favorable exercise of discretion is warranted.

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 met that burden. Accordingly, we sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of J-Y-L-*, ID# 15956 (AAO Mar. 16, 2016)