



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

[REDACTED]

#6

DATE: DEC 07 2012

Office: PORT-AU-PRINCE, HAITI

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

f.s.
Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Port-au-Prince, Haiti, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States, and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), in order to remain in the United States with his U.S. citizen spouse.

The Field Office Director found that the applicant failed to demonstrate extreme hardship to his U.S. citizen spouse and denied the waiver application accordingly. *See Decision of the Field Office Director* dated April 26, 2011.

The evidence of record indicates that the applicant entered the United States at Miami International Airport on April 19, 2004 and presented a fraudulent U.S. resident stamp, misrepresenting himself as a returning lawful permanent resident. In a sworn statement during secondary inspection, the applicant admitted that he knew the resident stamp was fraudulent and that attempting to enter with the stamp was illegal. The applicant then filed an application for asylum. The immigration court denied his asylum application and ordered him removed on July 14, 2006. The Board of Immigration Appeals denied the applicant's appeal on April 2, 2008, and he then failed to depart the United States as ordered and became a fugitive. [REDACTED] the applicant married a U.S. citizen, now his qualifying spouse.

On September 5, 2008, the applicant was arrested for battery. Although no charges were filed against him, he was transferred to the custody of Immigration and Customs Enforcement (ICE) and was scheduled for removal pursuant to the outstanding removal order of July 14, 2006. On January 1, 2009, the date of his scheduled removal, the applicant attempted to evade an ICE officer on the airplane and then bit that officer, causing injury. As a result, the applicant pled guilty to Assault on a Federal Officer, in violation of 18 U.S.C. § 111(a)(1), and was sentenced to six months of imprisonment. *Judgment, U.S. District Court, Eastern District of New York*, dated July 15, 2009. The applicant was removed to Haiti on September 2, 2009.

On appeal, counsel for the applicant asserts that the field office director failed to address fully the extreme hardship the qualifying spouse would experience if the waiver application were denied. Specifically, counsel states that the qualifying spouse would suffer extreme hardship upon relocation to Haiti due to her unfamiliarity with that country, her lack of ties there, and the poor health, safety, and economic conditions. Counsel alleges that the field office director failed to give enough weight to the country conditions evidence the applicant filed.

In support of the waiver application and appeal, the evidence of record includes, but is not limited to: statements from the applicant, the qualifying spouse, and the qualifying spouse's mother;

employment and medical records for the qualifying spouse; the applicant's marriage certificate; criminal records; country conditions information; and money transfer receipts. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides:

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver.- The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant accrued at least one year of unlawful presence in the United States between the denial of his asylum appeal on April 2, 2008 and his removal to Haiti on September 2, 2009. He is therefore inadmissible under section 212(a)(9)(B)(i) of the Act for a period of 10 years from his departure from the United States. The applicant does not contest this finding of inadmissibility on 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.

Section 212(i) of the Act provides:

- (1) The [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 applicant presented a fraudulent U.S. resident stamp in order to misrepresent himself as a returning lawful permanent resident at Miami International Airport on April 19, 2004. Therefore, he is inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to procure admission to the United States through fraud or misrepresentation. He does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act as the spouse of a U.S. citizen. In order to qualify for a waiver under either provision, however, he must first prove that the refusal of his admission to the United States would result in extreme hardship to his qualifying relative. 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-Moralez*, 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 of Immigration Appeals (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 U.S. 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 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, counsel for the applicant asserts that the qualifying spouse would suffer extreme hardship if she were to relocate to Haiti with the applicant. Counsel notes that living conditions in Haiti are very poor due to a cholera epidemic and the lack of housing and other basic infrastructure since the January 2010 earthquake. Counsel also states that the qualifying spouse is from Jamaica, has no family ties or employment opportunities in Haiti, and does not speak French or Creole. Finally, counsel indicates that the qualifying spouse would be unable to access necessary medical care in Haiti due to the absence of suitable healthcare facilities in that country.

The AAO finds that the applicant’s U.S. citizen spouse would experience extreme hardship if she were to relocate to Haiti. The most recent Travel Warning from the U.S. department of State indicates that cholera continues to be a problem and that medical facilities are poor. *U.S. Department of State, Travel Warning: Haiti*, dated June 18, 2012. The Travel Warning also notes that violent crime persists and that the ability of the authorities to respond to such incidents is limited. *Id.* Country conditions evidence also indicates that locating safe housing is difficult for many Haitians and that large numbers of people are displaced. *2010 U.S. Department of State Country Report for Haiti*, dated April 8, 2011. The applicant asserts that he must sleep outside

because his house is unsafe. The qualifying spouse also lacks family ties in Haiti other than the applicant, does not speak the local language, and is unlikely to have employment opportunities there.

The applicant has also demonstrated that his U.S. citizen spouse would suffer extreme hardship on separation from the applicant. A letter from the qualifying spouse's psychologist indicates that the qualifying spouse has been diagnosed with depressive disorder and anxiety disorder as a result of her stress relating to her separation from the applicant. The psychologist states that the qualifying spouse has experienced emotional problems due to the loss of her support system and the inability to reach personal goals, in particular having children, since the applicant's removal to Haiti. *Letter from* [REDACTED], dated June 22, 2011. Additionally, another doctor states that the qualifying spouse is experiencing high blood pressure as a result of her stress and depression relating to the applicant's absence. *Letter from* [REDACTED], dated June 9, 2011. Furthermore, the qualifying spouse's mother asserts that the qualifying spouse has been under significant emotional and physical stress while separated from the applicant. The qualifying spouse also states that she has experienced high levels of stress regarding the applicant's health and safety in Haiti because he does not have adequate housing and has become ill. She indicates that as a result of her stress, her blood pressure has increased.

Additionally, the qualifying spouse has experienced financial hardship in the applicant's absence. Her mother lives with her for financial support and the qualifying spouse holds two jobs to support herself, her mother, and the applicant. *Letter from* [REDACTED] dated June 14, 2011. The record contains copies of several money transfer receipts which reflect regular payments to the applicant in Haiti. Also, the record contains Retirement Savings Plan summaries which demonstrate that the qualifying spouse has taken large loans from her personal retirement account in order to provide for the basic needs of herself, her mother, and the applicant. In the aggregate, the qualifying spouse's emotional, medical, and economic difficulties rise to the level of extreme hardship. *See Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). The AAO therefore finds that the applicant has established extreme hardship to his U.S. citizen spouse as required under sections 212(a)(9)(B)(v) and 212(i) of the Act.

In that the applicant has established that the bars to his admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of 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 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).

Matter of Mendez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "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).

The adverse factors in the present case are the applicant's unlawful presence for which he now seeks a waiver; his misrepresentation of himself as a returning lawful permanent resident through the use of a fraudulent resident stamp, for which he also seeks a waiver; his failure to comply with the immigration court's removal order; his attempts to evade ICE officers on the day of his scheduled removal; and his conviction for Assault on a Federal Officer. Additionally, documentation in the record indicates that on January 22, 2009, prior to biting an ICE officer on the airplane, for which he was arrested and convicted, the applicant resisted his removal and was physically non-compliant, attempting to assault several other officers. Due to the applicant's resistance, several ICE officers had to restrain him on the floor and then carry him to the airplane. The AAO finds the applicant's immigration violations, his criminal conviction, and his related violent behavior to be serious negative factors in this case. *See Matter of Mendez, supra.*

Counsel asserts that the applicant's case includes sufficient hardship factors on which to base a favorable exercise of discretion. The AAO notes that a finding of extreme hardship carries considerable weight in the exercise of discretion and has carefully considered the extent to which the applicant's spouse's hardship mitigates the numerous negative factors in this case. However, extreme hardship is but one favorable factor in a determination of whether the Secretary should exercise discretion. *See Matter of Mendez, supra.* Additionally, the applicant married his qualifying spouse [REDACTED] 2007, after the immigration court ordered him removed and while his appeal with the Board was pending. His spouse was therefore aware at the time she married the applicant that he might be removed. The Seventh Circuit Court of Appeals held in *Garcia-Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991), that less weight is given to equities acquired after a deportation order has been entered. Further, 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 deportation proceedings, with knowledge that the alien might be deported. The Ninth Circuit Court of Appeals, in *Carnalla-Nunoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), also held that an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998), need not be accorded great weight by the district director in considering discretionary weight. Moreover, in *Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992), the Fifth Circuit Court of Appeals held that giving diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation was proper.

The AAO finds the only favorable or mitigating factors in the present case to be the applicant's U.S. citizen spouse, whom he married after being ordered removed, and the extreme hardship to his spouse if his waiver application is denied. These factors are insufficient to outweigh the many negative factors in the applicant's case, particularly his serious immigration violations, his violent behavior in relation to his removal, and his conviction for Assault on a Federal Officer. Thus, while the AAO regrets the hardship that the applicant's spouse will face as a result of a denial of the applicant's waiver request, it does not find the favorable factors in the present matter to outweigh the negative and will not favorably exercise the Secretary's discretion.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

The AAO notes that the Director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under sections 212(a)(9)(B)(v) and 212(i) of the Act, no purpose would be served in granting the applicant's Form I-212.

ORDER: The appeal is dismissed.