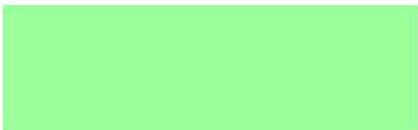


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U.S. Citizenship  
and Immigration  
Services



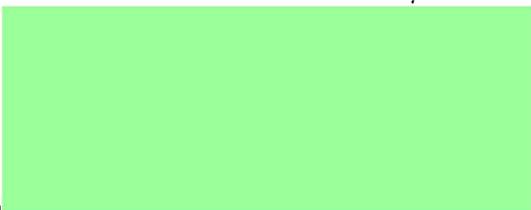
Date: Office: PHILADELPHIA, PA

FEB 01 2013

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:



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 in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica who was found to be inadmissible to the United States pursuant to 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 one year or more and seeking readmission within 10 years of his last departure from the United States.<sup>1</sup> The applicant does not contest this finding of inadmissibility. The applicant's spouse and child are U.S. citizens and he seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated September 2, 2010.

On appeal, counsel asserts that the applicant's spouse will experience extreme hardship if the waiver application is denied. *Form I-290*, received September 30, 2010.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statements, country conditions information on Jamaica, financial documents and the applicant's arrest report. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(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.  
.....

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<sup>1</sup> The AAO notes that based on the record, there are concerns of inadmissibility under section 212(a)(2)(C) of the Act. However, as the appeal will be dismissed based on inadmissibility under section 212(a)(9)(B) of the Act, we will not make a determination of whether the applicant is inadmissible under section 212(a)(2)(C) of the Act.

- (v) Waiver.-The Attorney General [now the Secretary of Homeland Security, "Secretary"] 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 [Secretary] 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.

The record reflects that the applicant entered the United States without inspection in March 2003, he was granted voluntary departure on September 26, 2006 and he departed the United States on October 20, 2006. The applicant accrued unlawful presence from March 2003 until September 26, 2006, the date he was granted voluntary departure. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present for a period of one year or more and seeking readmission within 10 years of his October 20, 2006 departure from the United States.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's 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*, 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 at 1293 (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.

Counsel states that the majority of the applicant’s spouse’s family ties are in the United States, including her father who has prostate cancer; the applicant’s spouse has a very close relationship with her father; the applicant’s children will have more opportunities in the United States; she has not lived in Jamaica during her adult life; she has little communication with her distant relatives in Jamaica; and she is assimilated into the U.S. culture.

Counsel cites to the U.S. Department of State’s reports in asserting that Jamaica has internal problems including unlawful killings by security forces, violence against women, high unemployment rates, and gender discrimination in the workplace. Counsel asserts that St. Catherine, the parish where the applicant is from, experienced a state of public emergency recently due to a high murder rate.

The applicant’s spouse states that she has only gone back to Jamaica for vacations; she could not live there with an infant; there is a lot of violence and gangs in St. Catherine; she works with mentally

disabled adults and these type of jobs do not exist in Jamaica; she would not be able to attend radiology technician courses in Jamaica; she has a weakened immune system due to her premature birth; she gets seriously ill four to six times a year; she has chronic tonsillitis and has terrible joint pain and headaches with her illnesses; and she has a heart murmur.

The applicant states that his spouse is attending community college and she intends to take radiology courses. The record includes the applicant's spouse's course schedule and account statement. The record includes general information on conditions in Jamaica which detail human rights and safety issues. The record includes an article from June 2010 stating that the parish of St. Catherine declared a state of public emergency due to the high number of murders there.

The record reflects that the applicant's spouse has a young child and was pregnant at the time of the present appeal. The AAO notes the country conditions information in the record and that the applicant's spouse may experience difficulty in raising her children in Jamaica, being separated from family and obtaining a similar education for herself. However, the record does not contain supporting documentary evidence that her father has medical issues or that she has medical issues. The record does not include evidence of financial hardship if she resides in Jamaica. The AAO also notes that she has spent some of her life in Jamaica. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant's spouse would suffer extreme hardship upon relocating to Jamaica.

The applicant states that his spouse is pregnant with their second child; her hours at work have been reduced; he has to pick up more hours when she cannot work; their daughter is in daycare for more hours when he works; and he will be the sole financial support when his spouse is on maternity leave.

The applicant's spouse states that the applicant is the only stable and truly loving person in her life; her parents did not get along and she did not have a stable upbringing; she was physically abused by an aunt and the applicant understands the emotional scars that she has endured; the applicant is the only person she can talk to and he loves her unconditionally; the applicant motivates and supports her in her college courses; she would not be able to survive without the income that the applicant brings in; she has two large hospital bills from when she did not have insurance; and the applicant makes sure that she is healthy and drives her everywhere to avoid stress.

Counsel states that the applicant's spouse will essentially be a single mother of two minor children; she would see the hardship her children would face without their father; she would not have the applicant's financial assistance in supporting her and their children; she will have to put her children in daycare; she was forced to apply for welfare checks and food stamps due to her financial situation; she cannot afford private health insurance so her daughter is enrolled in [REDACTED] she had to apply for financial aid; and she will have emotional hardship from losing the applicant at the time she is giving birth.

The applicant's spouse states that she does not think she would be able to focus on school and work and care for her daughter by herself; their bills have gone up since having their daughter; she has applied for

welfare benefits and food stamps; she does not like depending on the government for assistance; and her daughter needs the applicant in her life.

The record includes an ultrasound image from the applicant's spouse. The record includes paystubs and evidence of [REDACTED] membership.

As mentioned, the record reflects that the applicant's spouse has a young child and was pregnant at the time of the present appeal. She would have to raise the children without the applicant. The AAO notes counsel's claim that the applicant's spouse would have to see the hardship her children would face without their father. In addition, her paystubs reflect that she is making \$10 an hour. Although the record does not include evidence of welfare and food stamp benefits, the record reflects that income contribution from the applicant would benefit his spouse and that she would have additional expenses from daycare. The AAO also notes that the difficulty in attending school without the applicant's support. Considering the hardship factors presented, and the normal results of separation, the AAO finds that the applicant's spouse would experience extreme hardship if she remained in the United States.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.