

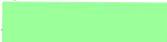


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JAN 30 2013** Office: KINGSTON, JAMAICA

FILE: 

IN RE: Applicant: 

APPLICATIONS: 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, Kingston, Jamaica, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 more than one year and seeking readmission within ten years of his last departure from the United States. The record indicates that the applicant is married to a U.S. citizen and is the father of a U.S. citizen child. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his spouse and child.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relatives and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 16, 2012.

On appeal, the applicant, through counsel, contends that the Field Office Director erred by determining that the applicant "failed to establish the requisite extreme hardship to his U.S. citizen spouse." *Form I-290B, Notice of Appeal or Motion*, dated June 11, 2012. Counsel also submits new evidence of hardship on appeal.

The record includes, but is not limited to, counsel's appeal brief, affidavits from the applicant's wife, a letter of support, medical and psychological documents for the applicant's wife, school records for the applicant's daughter, household and utility bills, financial documents, country-conditions documents for Jamaica, and documents pertaining to the applicant's removal proceeding. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9) 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.

....

- (v) Waiver.-The [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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 or his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States 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 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 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 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.

The record indicates that on December 26, 1997, the applicant entered the United States as a K-1 fiancé with authorization to remain in the United States until March 25, 1998; he was to marry his fiancée within this authorized period. He married his fiancée in 1999 and they divorced in 2001. The applicant was placed into removal proceedings after his Form I-485, Application to Register Permanent Residence or Adjust Status, was denied. On June 27, 2006, an immigration judge granted the applicant voluntary departure to depart the United States by October 25, 2006. On October 22, 2006, the applicant departed the United States. The applicant accrued over one year of unlawful presence between March 26, 1998, and October 22, 2006. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. Counsel does not contest the applicant’s inadmissibility.

Describing her hardship should she join the applicant in Jamaica, in her affidavit dated October 27, 2011, the applicant’s wife states she was born and raised in the United States, where her entire family resides. She claims that she would be unlikely to find employment in Jamaica because of her psychological conditions. In her letter dated October 17, 2011, [REDACTED] states she has been treating the applicant’s wife since May 2010 for severe depression and anxiety. The applicant’s wife states she will not receive the same medical care in Jamaica that she is currently receiving in Jamaica. In his consultation referral letter dated June 6, 2012, [REDACTED] states he has been treating the applicant’s wife for the past three and a half years for depression, gastroesophageal reflux disease, and anxiety; and she is currently taking antidepressant and anxiety medications. Additionally, in his letter dated May 25, 2012, [REDACTED] states the applicant’s wife, who had adjustable gastric band surgery on December 31, 2008, requires regular follow-up care every four to six weeks, and he does not know if she could receive such care in Jamaica. Further, the applicant’s wife states she has a heart

murmur, and her gastric band surgery was necessary to control her weight, because it affected her heart murmur and endangered her health.

Additionally, the applicant's wife states their daughter "would not receive the same education in Jamaica that she is currently receiving in the United States." In his appeal brief, counsel states the applicant's daughter "needs specialized educational assistance." Documents in the record establish that the applicant's daughter was assessed for special-education needs in 2012. Counsel states based on the applicant's and his wife's "economic situation" in Jamaica, they likely would be unable to afford to send their daughter to private school there. The applicant's wife states her family helps support her and their daughter, and in Jamaica, they would not have the same support system.

The AAO acknowledges that the applicant's wife is a U.S. citizen, and that relocation abroad would involve some hardship. However, no evidence has been submitted showing that the applicant's wife is unfamiliar with the culture and customs in Jamaica or that she has no family ties there. The record establishes that her parents are natives of Jamaica. Additionally, the record does not contain documentary evidence showing that the applicant's wife would be unable to obtain employment in Jamaica that would allow her to use the skills she has acquired in the United States. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Regarding the medical hardship to the applicant's spouse, no documentary evidence was submitted establishing that she cannot receive medical treatment for her medical conditions in Jamaica or that she has to remain in the United States to receive treatment. Moreover, regarding the hardship that the applicant's child may experience in Jamaica, she is not a qualifying relative under the Act, and the applicant has not shown that hardship to their child has elevated his wife's challenges to an extreme level. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Jamaica.

Concerning the applicant's wife's hardship in the United States, she states if the applicant is unable to return to the United States, she "would lose [her] soul-mate, [her] best friend and [her] source of emotional support." She states her health is deteriorating, and she takes prescription medication to help her sleep and to control her anxiety and depression. As noted above, [REDACTED] has been treating the applicant's wife since May 2010 for severe depression and anxiety. [REDACTED] claims that the applicant's wife's symptoms are related to raising their daughter alone while the applicant is in Jamaica. The applicant's wife also states their daughter misses the applicant. Additionally, [REDACTED] states that according to the applicant's wife, she was working two jobs to support her family but had to quit one because of a physical injury, and she resides with her mother and sister who provide "emotional support and some childcare."

The AAO acknowledges that the applicant's wife is suffering emotionally in being separated from the applicant. While it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished his wife's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. Moreover, though [REDACTED]

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refers to financial difficulties, the record does not contain objective evidence corroborating her claim. The applicant, therefore, has not distinguished his wife's financial challenges from those commonly experienced when a family member remains in the United States. Further, the record does not contain any documentary evidence establishing that the applicant is not currently employed in Jamaica and thereby financially able to assist his wife from outside the United States. The AAO also notes that the applicant's child may be suffering some hardship in being separated from her father; however, the applicant has not shown that their daughter's hardship has elevated his wife's challenges to an extreme level. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds 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)(v) 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.