U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

Date: APR 05 2013 Office: KINGSTON, JAMAICA FILE:

IN RE: Applicant:

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

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.

Thank you,

Ellen C. Johnson

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Kingston, Jamaica. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is the daughter of a U.S. citizen parent and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her mother in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant established extreme hardship, particularly considering her mother's significant family ties to the United States, her advanced age, her health, and country conditions in Jamaica.

The record contains, *inter alia*: letters from the applicant; letters from the applicant's mother, Ms. ; a letter from the Social Security Administration office; a letter from Ms. 's physician and copies of medical records; letters from the applicant's siblings; letters of support; copies of tax returns and other financial documents; a copy of the U.S. Department of State's Country Specific Information for Jamaica and other background information; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—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) provides, in pertinent part:

> (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien . . . .

In this case, the record shows, and the applicant does not contest, that in February 2001, the applicant attempted to enter the United States using a Jamaican passport with two back-dated Jamaica entry stamps in an attempt to disguise periods of unauthorized stay in the United States. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's mother, Ms. , states that she is seventy-one years old and has lived in the United States since 1989. According to Ms. , she is a widow and is dependent on Social Security benefits to survive. She contends her entire family, including her three other children, five grandchildren, and two sisters, all live in the United States. In addition, Ms. states her health is deteriorating and that her vision is very poor, making her unable to drive. She contends she has diabetes, heart problems, cardiomyopathy, leg ulcers, and hypertension, and that she takes five medications for her health problems. Ms. contends she goes to see her doctor at least once a month and has Medicare, which she would lose if she relocated to Jamaica. She states her other children do not live close by and have their own children to take care of. According to Ms. , her diabetes is difficult to control and she sometimes forgets to take her medicine or forgets to eat, which causes her to be unable to get up or move until one of her neighbors checks on her. Furthermore, Ms. contends that she would lose her Social Security benefits if she moves to Jamaica, would lose her Medicare, and would be unable to pay for her health care costs. She states she would be unable to find a job in Jamaica given her age and health problems, and contends that her life would be in danger in Jamaica.

After a careful review of the entire record, the AAO finds that if the applicant's mother decides to remain in the United States, she would suffer extreme hardship. The record contains ample documentation corroborating Ms. 's claims regarding her numerous medical conditions. A letter from her physician states she has diabetes, stage III chronic kidney disease, cardiomyopathy, and diabetic retinopathy which causes her to have difficult seeing and difficulty self-administering her insulin. According to the physician, Ms. 's diabetes is not well-controlled, and because she lives alone, her daughter's assistance in administering insulin would be most beneficial to Ms. Copies of Ms. 's medical records also show that she had a lesion on her left leg which was excised that subsequently got infected. The record also shows Ms. pays $400 per month for rent and documentation from the Social Security Administration corroborates her contention that she receives $457 per month in Supplemental Security Income. Letters from Ms. 's other children and family members corroborate her claim that she lives alone and that they are unable to care for her on a daily basis. Considering these unique circumstances cumulatively, the AAO finds that the hardship the applicant's mother would experience if she remains in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if the applicant's mother returned to Jamaica to be with her daughter, she would experience extreme hardship. As stated above, the record shows the applicant's mother has numerous, serious health problems. The AAO recognizes that returning to Jamaica would disrupt the continuity of her health care and that she would lose her Social Security and Medicare benefits. Moreover, the AAO acknowledges that Ms. has lived in the United States for more than twenty years, since 1989, and that readjusting to living in Jamaica would be difficult, particularly considering her advanced age and medical problems. Furthermore, the AAO also acknowledges that crime, including violent crime, is a serious problem in Jamaica, that medical care is much more limited than in the United States, and that emergency medical and ambulance services are limited. *U.S. Department of State, Country Specific Information, Jamaica*, dated January 08, 2013. Considering all of these factors cumulatively, the AAO finds that the hardship Ms. would experience if she returned to Jamaica to be with her daughter is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's misrepresentation of a material fact to procure an immigration benefit and the applicant's previous overstay. The favorable and mitigating factors in the present case include: the applicant's significant family ties to the United States, including her mother and three siblings, all of whom are U.S. citizens; the extreme hardship to the applicant's mother if she were refused admission; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.