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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:

[Redacted]

Office: ATLANTA, GEORGIA

Date:

JUN 19 2009

IN RE:

[Redacted]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Atlanta, Georgia. 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 Somalia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willfully misrepresenting a material fact to procure an immigration benefit. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and children in the United States.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the District Director*, dated December 21, 2005.

The record contains, *inter alia*: a statement from the applicant; a statement from the applicant's wife, [REDACTED] copies of the birth certificates of the couple's four U.S. citizen children; letters from the applicant's and [REDACTED]'s employers; tax and financial documents; a copy of a decision by an immigration judge; and a copy of a decision by the Board of Immigration Appeals (BIA). 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:

(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.

The record shows that in March 1996, the applicant used a fraudulent passport to travel from Somalia to London, and then entered the United States from London without documents. *Memo to File by U.S. Supervisory Immigration Inspector*, dated April 10, 1996; *Record of Sworn Statement in Affidavit Form*, signed by the applicant April 10, 1996. The record also indicates that an immigration judge found that the applicant submitted a fraudulent birth certificate to the immigration court, perjured himself before the court, and made a fraudulent claim for asylum. *Oral Decision of the Immigration Judge*, dated December 4, 1996, at 2, 8-10, 12. The BIA upheld the immigration judge's decision, noting that counsel failed to address the immigration judge's finding that the applicant submitted a fraudulent document

before the immigration court and failed to address the other aspects of the immigration judge's credibility findings. *Decision of the Board of Immigration Appeals*, dated May 8, 1998.<sup>1</sup>

On appeal, counsel does not address the immigration judge's findings, upheld by the BIA, that the applicant submitted a fraudulent birth certificate to the immigration court and made a fraudulent asylum claim. Therefore, the record shows, and counsel does not contest, that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. §1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to procure an immigration benefit.

A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. 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-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include: the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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.

*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). In addition, the Court of Appeals for the Ninth Circuit has held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9<sup>th</sup> Cir. 1987) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted); *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9<sup>th</sup> Cir. 1981) (economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme) (citations omitted).

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<sup>1</sup> The BIA denied a subsequent motion to reopen. *Decision of the Board of Immigration Appeals*, dated February 24, 2004.

The record reflects that the applicant and his wife, [REDACTED] have four U.S. citizen children and that, at the time of this appeal, [REDACTED] was pregnant with their fifth child. Copies of the birth certificates of the couple's four U.S. citizen children indicate they are currently between the ages of five and eleven. The record also shows that [REDACTED] has two children from a previous relationship, who are currently eighteen and nineteen years old and were born in Somalia. It is unclear whether these two children live with the applicant and [REDACTED] in the United States.

According to [REDACTED], she would suffer extreme hardship if her husband's waiver application were denied because the applicant, up until recently, was the sole provider of their family. [REDACTED] states that she would be unable to financially support her family if her husband departed the United States. She states that in December 2004, she started working at Hertz Car Rental and earns \$15,000 per year. In addition, [REDACTED] claims her children are emotionally attached to the applicant and that his absence would "cause permanent emotional and behavioral problems." Furthermore, [REDACTED] states that due to her having a heart murmur and her pregnancy, she is unable to support her children physically, emotionally, and financially. Finally, [REDACTED] claims her husband would be killed if he were deported to Somalia because he belongs to a small minority group. *Letter of Hardship from [REDACTED]*, dated January 12, 2006.

Upon a complete review of the record evidence, the AAO finds that the applicant has established that his wife will experience extreme hardship if his waiver application is denied.

As an initial matter, the AAO notes that although the immigration judge found that the applicant submitted a fraudulent birth certificate in immigration court, the record contains sufficient evidence confirming the applicant's identity and the fact that he is Somalian. *Affidavit of Tribal Affiliation by [REDACTED]* dated January 13, 2006 (stating that the applicant is "the son of my father's friend since elementary school" and attesting that the applicant was born in Somalia); *Affidavit of Tribal Affiliation by [REDACTED]*, dated January 13, 2006 (stating that the applicant was her neighbor in Somalia and attesting that the applicant was born in Somalia); *Affidavit of Tribal Affiliation by [REDACTED]*, dated January 13, 2006 (stating that he is the applicant's uncle and attesting that the applicant was born in Somalia); *Affidavit of Birth by [REDACTED]* dated May 15, 2002 (stating that she and the applicant have been friends since early childhood in Somalia and attesting that the applicant was born in Somalia); *Affidavit of Birth by [REDACTED]* dated May 15, 2002 (stating that the applicant was her neighbor in Somalia and attesting that the applicant was born in Somalia); *Affidavit of Birth by [REDACTED]* dated May 14, 2002 (stating that the applicant was her neighbor in Somalia and attesting that the applicant was born in Somalia).

The AAO finds that the applicant's wife would suffer extreme hardship if the applicant's waiver application were denied. Although the record shows that [REDACTED] recently became employed, tax documents in the record show that the applicant was the sole source of income from at least 2000 until November or December 2004. *See U.S. Individual Income Tax Returns 2000, 2001, 2002, 2003, and 2004* (stating [REDACTED]'s occupation as "housewife"); *Letter from [REDACTED]*, dated December 1, 2005 (stating [REDACTED] has been employed since November 29, 2004, and earns \$7.95 per hour). The applicant has been employed as a "Production Specialist 3/Material Handler" since June 1999. *Letter from [REDACTED]* dated January 6, 2006. According to the most recent tax documents in the

record, in 2004, the applicant earned \$26,711. *See 2004 U.S. Individual Income Tax Return.* It is evident from the record that [REDACTED] would experience extreme hardship raising their five U.S. citizen children, the oldest of whom is eleven years old, without her husband's financial assistance.

It would also constitute extreme hardship for [REDACTED] to return to Somalia, where she was born, to avoid the hardship of separation from her husband. According to the U.S. Department of State 2005 Profile of Somalia contained in the record, there has been no central government in Somalia since 1991 and much of the country has been subject to serious civil strife. On November 15, 2008 the U.S. Department of State issued a travel warning for Somalia recommending that U.S. citizens avoid all travel to Somalia due to terrorist attacks and other acts of violence. [REDACTED] would need to readjust to living in Somalia, a difficult and dangerous situation, particularly considering the couple has five young children who were all born in the United States. Based on these considerations, the AAO finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

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 fraud and willful misrepresentation to procure an immigration benefit and periods of unauthorized presence. The favorable and mitigating factors in the present case include: the applicant has significant family ties to the United States, including his U.S. citizen wife and their five U.S. citizen children; the extreme hardship to the applicant's wife if he were refused admission; the fact that the applicant has paid taxes while working in the United States; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violation is 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.