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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

#5

FILE:



Office: NEW YORK, NY

Date:

DEC 21 2010

IN RE:

Applicant:



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:



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,

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, New York, New York. 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 [REDACTED] 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 willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a 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 her husband and children in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated March 14, 2008.

On appeal, counsel asserts that the applicant's spouse will experience extreme hardship as a result of the applicant's inadmissibility.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating they were married on December 2, 2001; copies of the birth certificates of the couple's three U.S. citizen children; a certification of the applicant's pregnancy with their fourth child; a letter and an affidavit from [REDACTED] letters of support; a psychological evaluation for [REDACTED]; an affidavit from a professor; a letter from the applicant's physician; a letter from the couple's child's physician; copies of school records; a copy of the U.S. Department of State's Report on Female Genital Mutilation (FGM) for Mali and other background materials; tax and other financial documents; photos of the applicant and her family; 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) of the Act provides, in pertinent part:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

In this case, the record shows, and the applicant does not contest, that she entered the United States on December 19, 1998, by presenting a passport and visa issued in the name of [REDACTED]. Therefore, the record shows 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 willful misrepresentation of a material fact in order to procure an immigration benefit.

A waiver of inadmissibility under section 212(i) 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 her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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 USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of [REDACTED]* (1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

*Id.* See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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.” [REDACTED] 10 I&N Dec. 448, 451 (BIA 1964). [REDACTED] 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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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. [REDACTED] and [REDACTED] (BIA 2001) (distinguishing [REDACTED] 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. [REDACTED] Nevertheless, family ties are to be

considered in analyzing hardship. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in [REDACTED] the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; see also *U.S. v. [REDACTED]* [REDACTED] was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of [REDACTED]* the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. See, e.g., *Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. [REDACTED]

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

In this case, the applicant’s husband, [REDACTED] states that he and his wife have three U.S. citizen children and are expecting their fourth child. [REDACTED] contends he grew up in Mali where he went to school only through the second grade. He states he worked on his family’s farm until he injured his knee and that because there was no clinic close to his village, he was unable to get timely treatment, causing him to have one leg that is shorter than the other. According to [REDACTED], he has lived in the United States for eighteen years and currently works two full-time jobs. [REDACTED] states that because of his jobs, he does not see his children during the weekdays and his wife takes care of them. He contends he would be unable to care for his children without his wife and that he could not afford to hire someone to care for them. In addition, [REDACTED] contends he cannot move back to Mali to be with his wife. He states he would be unable to find a job there and that he would be unable to support his

family. Moreover, [REDACTED] states that if he moved back to [REDACTED], his two daughters would suffer from female genital mutilation because "every girl in [REDACTED] has to be circumcised." He states his wife was circumcised when she was young. [REDACTED] contends that his mother as well as his wife's mother demand that his daughters be circumcised. Furthermore, [REDACTED] states his daughter [REDACTED] has serious asthma and that she almost died the one time he took her to Mali in 2005 because the nearest clinic is hundreds of miles away. [REDACTED], dated May 10, 2008; *see also Letter from [REDACTED]*, dated February 24, 2008.

A letter from a professor at Columbia University who teaches courses that include material on female genital mutilation (FGM) states that 92% of females in [REDACTED] have undergone FGM. According to the professor, in most parts of rural Mali, where medical facilities are ill equipped, a child who develops uncontrolled bleeding or infection after FGM may die within hours. In addition, the professor contends that Mali is one of the few countries where women who have not yet undergone FGM during childhood will undergo the procedure just before or after childbirth. The professor contends that the applicant's "daughters face FG[M] with virtually 100% certainty if they return to Mali," regardless of the age at which they return, because of the family's ethnic group, the region in which they live, and cultural beliefs. The professor states that the ability of the applicant to go against tradition would be much more difficult because both she and her own mother, the children's grandmother, have undergone FGM. Moreover, the professor states that even in the capital city of Bamako, obtaining medications in Mali is extremely difficult as they are often unavailable. [REDACTED], dated February 22, 2008.

A letter from a physician states that he has examined the applicant and confirms that the applicant has undergone FGM. [REDACTED], dated September 12, 2007. A letter from [REDACTED] states that she has asthma and uses a nebulizer daily to control it. He states that an asthma attack can be precipitated by dust, allergens, upper respiratory illness, or changes in the weather. [REDACTED], dated January 22, 2008.

A psychological evaluation of [REDACTED] states that he has severe depression and anxiety. The psychologist diagnosed him with an adjustment disorder mixed with anxiety and depressed mood. [REDACTED], dated April 4, 2008.

Upon a complete review of the record, the AAO finds that the applicant has established that her husband will suffer extreme hardship if her waiver application is denied.

The record shows that the applicant and her husband have three U.S. citizen children who are currently eleven, eight, and five years old. According to the record, the applicant has helped to financially support the family by working full-time in addition to caring for the couple's three children while [REDACTED] works two full-time jobs. *2006 Wage and Tax Statement (Form W-2)* (showing that the applicant earned \$11,220 and [REDACTED] earned \$[REDACTED]); *see also Letter from [REDACTED]*, dated January 25, 2008 (stating that the applicant works full-time and earns a biweekly gross wage of [REDACTED]). In addition, the record shows that the couple's daughter, [REDACTED] has severe asthma and requires daily nebulizer treatments. According to her physician, [REDACTED] may suffer an

asthma attack for several reasons, including changes in the weather or dust. [REDACTED] contends, his wife takes care of their children while he works and she takes care of Fatimata's health care needs. Considering these unique factors cumulatively, particularly the fact that [REDACTED] would be solely responsible for caring for and financially supporting their three minor children, one of whom has a serious health condition, the AAO finds that the level of hardship [REDACTED] would experience if his wife's waiver application were denied is extreme.

The AAO also finds that [REDACTED] would suffer extreme hardship moving back to Mali to be with his wife. [REDACTED] would need to move his three children to Mali after having lived in the United States their entire lives. Furthermore, [REDACTED] reasonably fears his two daughters would undergo FGM. According to the professor, the couple's daughters would likely undergo FGM regardless of the age at which they move to Mali and regardless of whether the applicant and [REDACTED] attempt to go against tradition by not having them circumcised. *Affidavit from [REDACTED] supra.* Moreover, the record indicates [REDACTED] has severe asthma that requires daily treatments, but obtaining medications or medical treatment in Mali is difficult. In addition, the AAO takes administrative notice that the U.S. Department of State recognizes that medical facilities in Mali are limited and most U.S. medicines are unavailable. *U.S. Department of State, Country Specific [REDACTED]*, dated June 16, 2010. Considering all of these factors cumulatively, the hardship [REDACTED] would experience if his wife were refused admission is extreme, going well beyond those hardships ordinarily associated with inadmissibility. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the [REDACTED] 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 are the applicant's willful misrepresentation and unlawful presence in the United States. The favorable and mitigating factors in the present case include: the applicant's significant family ties in the United States including her U.S. citizen husband and three U.S. citizen children; the extreme hardship to the applicant's husband if she were refused admission; and the applicant's lack of any 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.