

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



U.S. Citizenship
and Immigration
Services

H5



DATE: DEC 07 2011 OFFICE: BALTIMORE

FILE: [REDACTED]

IN RE: [REDACTED]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink that reads "Michael Shumway".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Cameroon. The applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under this Act, by fraud or willfully misrepresenting a material fact. The applicant is married to a U.S. citizen, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant seeks a waiver of her inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so that she may live in the United States with her spouse.¹

In a decision dated May 12, 2009, the director determined the applicant had failed to establish that her spouse would experience extreme hardship if she were denied admission into the United States. The waiver application was denied accordingly.

The applicant does not contest that she is inadmissible under section 212(a)(6)(C)(i) of the Act. She asserts on appeal, however, that the director misapplied the extreme hardship standard in her case, and that Board of Immigration Appeals (BIA) case law supports a waiver approval in her case. Specifically, the applicant refers to BIA cases, *Matter of Recinas*, 23 I. & N. Dec. 467 (BIA 2002) and *Matter of Andaloza*, 23 I. & N. Dec. 319 (BIA 2002). The applicant submits no new corroborative or documentary evidence in support of her appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part that:

- (i) 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.

The record reflects that on November 9, 1998, the applicant attempted to gain admission into the United States using a fraudulent passport and visa. The applicant is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for attempting to procure admission into the United States through fraud.

Section 212(i) of the Act provides:

¹ It is noted that the record contains a Form I-730, Refugee/Asylee Relative Petition, approved on the applicant's behalf on May 9, 2001. The approval was based on a previous marriage, and the record reflects the applicant divorced her previous husband on April 20, 2004. An adjustment of status application filed on the basis of her prior marriage was thus not approved.

- (1) The [Secretary] may, in the discretion of the [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 [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.

The applicant is married to a U.S. citizen. The applicant's spouse is a qualifying relative for section 212(i) of the Act, waiver of inadmissibility purposes.

The applicant refers to hardship her U.S. citizen children would experience if the waiver application is denied. In particular, the applicant refers to two BIA decisions (*Matter of Recinas* and *Matter of Adaloza*) that she claims establish hardship to her children should be taken into account for section 212(i) of the Act waiver purposes. The applicant indicates that the hardship factors in the referenced cases are similar to those contained in her case, and she infers that a finding of extreme hardship should be made based on the findings in the referenced decisions. The AAO has reviewed the legal decisions referred to by the applicant. The decisions are not applicable to the applicant's case.

The cases referred to by the applicant dealt with cancellation of removal relief under section 240A(b) of the Act, 8 U.S.C. § 1229(b). Section 240A(b) of the Act specifically allows hardship to an applicant's spouse, parent *and/or child* to be considered, and it was the hardship to the respondent's U.S. citizen children that persuaded the BIA in both cases to determine that an exceptional and extremely unusual hardship standard was met. Under section 212(i) of the Act, however, Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present matter, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's U.S. citizen spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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*, 22 I&N Dec. 560, 565 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 BIA 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 BIA 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 BIA 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.

The applicant asserts on appeal that her husband will be unable to move with her to Cameroon if she is removed, because he may be incarcerated for the next four years (through sometime in 2013). She indicates that her three children would have to move with her to Cameroon as she has no one to care for them in the U.S, and that she would be unable to find employment in Cameroon and would therefore be unable to care for herself and the children. She indicates that all of these factors would cause her husband to suffer emotional hardship.

No new evidence is submitted on appeal. The AAO notes, however, that it maintains plenary power to review each appeal on a *de novo* basis. *See, e.g., Dor v. INS*, 891 F. 2d 997, 1002 n. 9 (2d Cir. 1989).

The record contains evidence previously submitted by the applicant, including statements that her husband is confined to home detention pending a trial on federal criminal charges. The statements indicate the applicant is the sole provider and caretaker for her husband and three young U.S. citizen children, that her husband relies on her to take care of him, and that her husband would experience emotional hardship if he were separated from the applicant and his children. Later statements by the applicant indicate that her husband's sister is now providing a home, food, shelter and clothing to the applicant's family. The record contains court documents reflecting the applicant's husband was charged with several immigration-related federal crimes and that pending trial he was placed into a monitored, home confinement program confining him to his sister's home with limited access outside of the home. The record additionally contains a medical receipt indicating the applicant's husband has hypertension, and the record contains birth certificates for the applicant's three children, born January 28, 1999, April 30, 2006 and April 13, 2007.

Upon review, the AAO finds the evidence in the record fails to show that the hardships faced by the applicant's husband, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

The medical receipt contained in the record fails to establish that the applicant's husband suffers from a medical condition that would cause him to experience extreme physical hardship if the applicant were not near him. In addition, the evidence fails to establish that the applicant's husband is dependent upon the applicant for financial support or for a home. The evidence also does not establish that hardships faced by the applicant's children would cause her husband to experience extreme emotional hardship beyond that normally experienced upon the removal of a family member. Furthermore, the record lacks corroborative evidence to establish that the applicant would be unable to find work in Cameroon, that she would be unable to support her family in Cameroon, or that she and her children would be in circumstances in Cameroon that would cause her husband to experience extreme emotional hardship. The record also lacks conviction or sentencing documentation to clarify whether the applicant's husband was convicted, or the terms and length of his confinement. The length of separation time between the applicant's husband and his family has thus also not been established, and the applicant failed to provide any evidence to demonstrate that her husband would experience extreme hardship if he relocated to Cameroon after he is released from confinement.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship" Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. In the present matter, the applicant has established only that her husband would experience the type of emotional and financial hardship commonly associated with removal or inadmissibility, if the applicant is denied admission into the United States.

Upon review of the totality of the evidence, the AAO finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.