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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**



PUBLIC COPY



115

Date: DEC 14 2011

Office: NAIROBI

FILE: 

IN RE: Applicant: 

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 APPLICANT:

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Nairobi, Kenya, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant is a native of Somalia and current resident of [REDACTED] who attempted to procure entry to the United States in November 1999 by presenting a fraudulent passport. The applicant subsequently filed for asylum in February 2000. The applicant's asylum and withholding of removal applications were denied on February 9, 2000. *Order of the Immigration Judge*, dated February 9, 2000. Consequently, the applicant was removed from the United States on February 15, 2000. The applicant was thus 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 having attempted to procure entry to the United States in November 1999 by fraud or willful misrepresentation. The applicant does not contest this finding of inadmissibility. Rather, he is seeking a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse and children.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.¹ *Decision of the Field Office Director*, dated July 14, 2009.

On appeal, the applicant, his spouse and his step-child submit letters in support. The entire record was reviewed and considered in rendering this decision.

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

- (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.

Section 212(i) of the Act provides:

- (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 immigrant

¹ In her decision to deny the applicant's Form I-601, the field office director concurrently denied the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal. The basis for the I-212 filing by the applicant was his attempt to procure entry with a fraudulent passport and his subsequent removal. See *Notice to Alien Ordered Removed/Departure Verification*, dated February 15, 2000. As the record indicates that the applicant has remained outside of the United States since his removal in 2000, he has satisfied the five year bar and no longer needs an approved Form I-212. As such, the Form I-212 is deemed to be moot.

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...

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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or the children can be considered only insofar as it results in hardship to a qualifying relative. 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 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 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.

The applicant’s U.S. citizen spouse asserts that she will suffer emotional and financial hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility. In a letter the applicant’s spouse explains that in America she is a single mom and primary caregiver to her children and as a result of her situation, she contends that she is barely able to see her children. She further asserts that she suffers from lower back pain and heart problems and working all day is thus difficult for her. She contends that if her husband were to reside in the United States, she would be able to take care of the children while he supported the family financially. In addition, the applicant’s spouse asserts that the children are suffering as a result of long-term separation from their father. She notes that they have never lived with him. *Letter from* [REDACTED] dated August 10, 2009. In a separate statement from the applicant, he contends that his wife is suffering from depression. *See Letter from* [REDACTED]

In support, a letter has been provided from the applicant’s step-child, [REDACTED] outlining the hardships she, her sisters and her mother are experiencing as a result of long-term separation from the applicant. She asserts that her mother is stressed and her younger sister cries because she wants to be with her father. In addition, she contends that in her religion, the father is supposed to work while the mother cares for the children. *Letter from* [REDACTED] dated November 19, 2008. In addition, a letter has been provided from [REDACTED] the applicant’s spouse’s cousin, declaring that he has been supporting the applicant’s spouse and children financially and emotionally. He further outlines the hardships they are experiencing as a result of long-term separation from the applicant. He concludes that he would love to continue supporting them but he cannot do it anymore because of his own financial situation. *Letter from* [REDACTED] dated November 27, 2008. Finally, letters

have been provided from the [REDACTED] and the applicant's spouse's neighbor and friend, confirming that the applicant's spouse is experiencing hardships trying to raise three children as a single mother. *Letter from [REDACTED], Executive Director, [REDACTED]*, dated November 20, 2008 and *Letter from [REDACTED]*

To begin, with respect to the emotional hardships referenced, no supporting documentation has been provided establishing that the applicant's spouse is suffering from depression as a result of her husband's inadmissibility. Nor has it been established that traveling to [REDACTED] to visit the applicant is causing the applicant's family, and in particular, his wife, the only qualifying relative, extreme hardship. With respect to the medical hardships referenced by the applicant's spouse, no documentation has been provided on appeal from her treating physician establishing her current conditions, the severity of the situation, the short and long-term treatment plan and what specific hardships she is experiencing as a result of her husband's absence. The AAO notes that the medical documentation provided regarding the applicant's spouse's heart condition and back pain are from 2006-2007 and fail to establish her current situation and any limitations. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

As for the financial hardship referenced above, no documentation has been provided that outlines the applicant's spouse's current financial situation, including income, expenses, assets and liabilities, to establish that without the applicant's presence in the United States, she is experiencing financial hardship. It has also not been established that the applicant is unable to obtain gainful employment in [REDACTED] to assist his family in the United States.

The AAO recognizes that the applicant's spouse will endure hardship as a result of a long-term separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The record fails to establish that the applicant's spouse's emotional and financial survival directly correlate to the applicant's physical presence in the United States. The AAO concludes that based on the evidence provided, it has not been established that the applicant's U.S. citizen spouse will experience extreme hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility.

With respect to relocating abroad to reside with the applicant due to his inadmissibility, the applicant's spouse explains that she is currently in [REDACTED] with her husband and her children are suffering as they are not adjusting to a new country and language. In addition, the applicant's spouse asserts that things in [REDACTED] are expensive and they are not able to maintain their standard of living. She explains that they live in a one bedroom apartment where the children sleep in the living room. She references that they stay at home all day because they cannot afford to site see in [REDACTED]. *Supra* at 1. In support, a letter has been provided from the applicant's step-child, [REDACTED] outlining the hardships she is experiencing while in [REDACTED]. *Letter from [REDACTED]* dated August 10, 2009. No supporting documentation has been provided establishing the hardships the applicant's

spouse and step-daughter contend the family is experiencing in [REDACTED]. As noted above, assertions without supporting documentation do not suffice to establish extreme hardship. The AAO notes that in the applicant's statement, he states that his wife and daughters are in [REDACTED] and "we are doing OK...." *Letter from [REDACTED] dated August 10, 2009.*

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility, 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. The waiver application is denied.