

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**

7/5



Date: **JUL 25 2011**

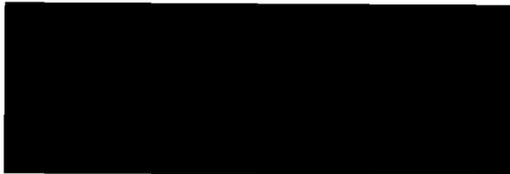
Office: PHILADELPHIA, PA

FILE: 

IN RE: 

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:



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, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Angola, who 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 making a material misrepresentation regarding his marital status. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130), and his wife, a United States citizen, is his petitioner. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The Field Office Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in an "extreme hardship" to the qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated March 9, 2009.

On appeal, the applicant's attorney provided a brief in support of the applicant's waiver application. In the brief, the applicant's attorney asserts that the qualifying spouse would face emotional, psychological and financial hardships if she were to be separated from the applicant. Further, the applicant's attorney also indicates that the qualifying spouse's children have issues in school, and the qualifying spouse contends that the children's issues, coupled with the qualifying spouse's psychological issues, will lead to long term negative affects for the whole family.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), briefs and letters from the applicant's attorney, an email to the United States consulate in Angola from the applicant's attorney, letters from the qualifying spouse and the applicant, a letter from a social worker regarding the qualifying spouse, a prescription for the qualifying spouse, letters from the qualifying spouse's children, documentation regarding the qualifying spouse's children, financial documentation regarding the applicant and qualifying spouse's income, letters from friends, a letter from the applicant's former companion and other documents indicating that she was never married, a criminal registry certificate, Form I-130 and an Application to Register Permanent Residence or Adjust Status (Form I-485), as well as the accompanying materials submitted in conjunction with the application. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The Field Office Director found that the applicant misrepresented his marital status in his visa application that he submitted on August 11, 2006.

The applicant's attorney asserts that the applicant never checked off the box on his visa application indicating that he was married and that he wrote down "living together" rather than checking off the box for married. Moreover, the applicant's attorney states that the applicant never submitted a marriage certificate. The applicant's attorney also contends that the application was filled out mistakenly. The applicant also submitted documentation confirming that he had never married prior to his marriage to the petitioner, and that the person he was living with has also never been married.

In a letter dated January 12, 2009, the Field Office Director indicated that the applicant did not write down "living together" anywhere on his nonimmigrant visa application and that he clearly indicated [REDACTED] was his spouse by writing it in a box labeled "Spouse's Full Name." Therefore, even though the applicant did not check the box for married, he did provide a name for a spouse. He also filled out the box for Spouse's DOB and provided a date, July 29, 1978, on the nonimmigrant visa application. Further, in the supplement to the visa application (Form DS-157), the applicant also provided the name of his "conjugue" or spouse. Therefore, although the applicant left the marital status box blank, he still represented that he was married in two places within the nonimmigrant visa application.

Further, the applicant's attorney asserts that USCIS failed to provide a copy of the visa application and therefore did not produce enough evidence in support of its claim that the applicant committed fraud. However, when an applicant is seeking waiver of inadmissibility, the burden of proof is always on the applicant to establish by a preponderance of the evidence that he is not inadmissible. The burden never shifts to the government to prove admissibility during the adjudication of a benefit application, including an application for a waiver. INA § 291; *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1976). The applicant has not provided any evidence to support his claim that he did not procure admission to the United States by misrepresenting his marital status, and he is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

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.

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 wife 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 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 qualifying relative is his wife, and as aforementioned, his Form I-130 has already been approved. The documentation provided that specifically relates to the applicant's hardship includes Form I-601, Form I-290B, briefs and letters from the applicant's attorney, letters from the qualifying spouse and the applicant, a letter from a social worker regarding the qualifying spouse, a prescription for the qualifying spouse, letters from the qualifying spouse's children, documentation regarding the qualifying spouse's children, financial documentation regarding the applicant and qualifying spouse's income, letters from friends and other materials submitted in conjunction with Form I-485. The entire record was reviewed and considered in rendering a decision on the appeal.

As aforementioned, the applicant's attorney asserts that the qualifying spouse would face emotional, psychological and financial hardships if she were to be separated from the applicant. Further, the applicant's attorney indicates that the qualifying spouse's children have issues in school, and the qualifying spouse contends that her children's issues, coupled with the qualifying spouse's psychological problems, will lead to long term negative affects for the whole family.

The applicant's attorney contends that the qualifying spouse will suffer emotional, psychological and financial hardships due to her separation from the applicant. The record contains a letter from a social worker, a prescription for the qualifying relative and a letter from the qualifying relative, as well as other letters from friends. The letter from the social worker consists, in large part, of the social worker quoting statements made by the qualifying spouse. The letter provides very little detail regarding the types of emotional and psychological issues that are facing the qualifying spouse. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any treatment plan for the conditions noted in the evaluation, to further support the gravity of the situation. In the qualifying spouse's letter, she indicates that her children's father left them and she explains that if the applicant leaves them it will be very difficult on her and her children. Although this provides some insight into the emotional and psychological struggles she may face, her letter also lacks detail regarding the exact nature and severity of her emotional and psychological issues should she be separated from the applicant. On appeal, the applicant also submitted a copy of a prescription for the qualifying spouse to treat her depression. However, the date of the copy of the prescription was cut off and could not be read, and therefore it is unclear when the qualifying spouse was prescribed such medicine. Moreover, there was no other evidence confirming that the qualifying spouse had been diagnosed with depression.

The applicant's attorney contends that the learning issues of the qualifying spouse's children when aggregated with her emotional and psychological issues will have a negative impact on her entire family. However, there was also little documentation to support these assertions or to provide any detail as to the types of hardships the qualifying spouse will face as a result of her children's learning difficulties. Further, while the record contains a diagnosis for each of the children's learning issues, the documents provided fail to describe the assistance that the children require in order to address their issues or to explain why the assistance of the applicant in particular would be necessary.

The applicant's attorney also asserts that the qualifying spouse would suffer financially without the contributions of the applicant. The record contains documentation of the qualifying spouse and applicant's income. A letter from the qualifying spouse's employer indicating her income, a bank statement and a lease were also submitted with Form I-485. The pay stubs and tax returns reveal that the applicant did not begin to contribute towards the income of the applicant until 2009. Further, the applicant signed Biographic Information (Form G-325A) in 2008 indicating that he has been unemployed since he has been in the United States. As such, it appears that the qualifying spouse has been financially supporting herself and her children at least until 2008. Further, the record contains limited information regarding the expenses of the qualifying spouse and her family. As such, the applicant has failed to submit sufficient evidence to demonstrate the financial hardships the qualifying spouse will suffer without the applicant's assistance.

The AAO recognizes that the applicant's spouse will endure hardship as a result of 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. In regards to establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, the AAO notes that no claim has been made that the applicant's wife would experience extreme hardship if she relocated to Angola. Therefore, the AAO cannot make a determination of whether the applicant's wife would suffer extreme hardship if she moved to Angola.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his 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.