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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**



#15



DATE: JUN 30 2011 Office: CALIFORNIA SERVICE CENTER 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:

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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant, a citizen of Tanzania, misrepresented his marital status on the Form I-751, Petition to Remove the Conditions on Residence (Form I-751), filed in February 2003. Specifically, the applicant claimed that he was married to [REDACTED], the petitioner of the Form I-130, Petition for Alien Relative, when in fact, they had divorced in November 2002, prior to the Form I-751 submission. The applicant was thus 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 having attempted to procure lawful permanent resident status by fraud or willful misrepresentation. The applicant does not contest this finding of inadmissibility. Rather, he seeks 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 child, born in 2007.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Director*, dated January 7, 2009.

In support of the appeal, counsel for the applicant submits a brief, dated March 3, 2009, and referenced exhibits. 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, 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse 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

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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 reside in the United States while the applicant relocated abroad due to his inadmissibility. In a declaration she asserts that her husband is thoughtful, caring and supportive and means the world to her and long-term separation would cause her emotional hardship. In addition, the applicant's spouse explains that her husband plays an integral role in their daughter's life and were he to relocate abroad, their daughter would suffer due to long-term separation from her father, thereby causing her emotional hardship. Moreover, the applicant's spouse explains that she works full-time and her husband plays a critical role in maintaining and managing their rental properties and were he to relocate abroad, she would not be able to assume those responsibilities. Further, the applicant's spouse contends that her husband plays a crucial role in the financial support of the household and for the rental properties when there is a shortfall. She states that he earns over \$55,000 per year plus benefits, including health insurance and flexible pay that is used to pay for their daughter's day care, but were he to relocate abroad, she would experience a financial shortfall and possibly be unable to cover their mortgage payments. She also contends that she would not be able to afford to travel often to visit her husband due to the high costs of travel to Tanzania. *Affidavit of* █
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To begin, the record contains no supporting evidence concerning the emotional hardship the applicant's spouse states she will experience due to long-term separation from her husband. Nor does the record contain supporting evidence concerning the emotional hardship the applicant's spouse contends her child will experience due to long-term separation from the applicant. 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)).

With respect to the hardship referenced in having to manage the rental properties were her husband to relocate abroad, it has not been established that without the applicant's physical presence in the United States, his spouse would not be able to maintain the rental properties on her own or employ a property management company to assist her. Alternatively, it has not been established that the applicant's spouse would be unable to sell the properties, thereby ameliorating the hardships of having to maintain the properties without her husband's daily presence. As for the financial hardship referenced with respect to the loss of her husband's income, counsel has not provided any documentation of the applicant's and his spouse's current expenses and assets and liabilities and

overall financial situation. There is insufficient evidence on the record to support the assertion that were the applicant to relocate abroad, the applicant's spouse would be unable to support herself and meet expenses and moreover, would be unable to afford to travel to Tanzania to visit her spouse. The AAO notes that the applicant's spouse, irrespective of her and her husband's rental properties, has been gainfully employed since 2003 as a Teacher, earning over \$53,000. *See Letter from [REDACTED] Payroll/Benefits, Allendale Public School, dated September 29, 2006 and Form W-2, Wage and Tax Statement for 2008.* Finally, counsel has failed to establish that the applicant will be unable to obtain gainful employment in Tanzania that will permit him to assist his wife financially in the United States should the need arise.

The AAO recognizes that the applicant's spouse will endure hardship as a result of 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.

In a declaration, the applicant's U.S. citizen spouse explains that she was born and raised in the United States, her parents and siblings live in Michigan and were she to relocate abroad to reside with the applicant due to his inadmissibility, she would suffer hardship due to long-term separation from her family. In addition, the applicant's spouse references the distance and exorbitant costs of travel to Tanzania. Moreover, the applicant's spouse contends that she is unfamiliar with the country, culture and customs.

Further, the applicant's spouse explains that she has a rare congenital heart defect, Scimitar Syndrome, that requires constant monitoring and check-ups with a heart specialist familiar with her condition and a relocation abroad would cause her medical hardship. Finally, the applicant's spouse notes that her daughter requires monitoring to determine if Scimitar Syndrome has been passed on to her, as it is a genetic condition. The applicant's spouse explains that if her daughter has the condition, she will need open heart surgery and living across the world from their doctors would put their lives at risk. *Supra* at 2-3. Medical documentation, including letters from the applicant's spouse's treating physicians confirming her diagnosis of Scimitar Syndrome and genetic counseling documentation have been submitted. *See Letter from [REDACTED] dated September 11, 2001, Operative Notes, dated June 17, 1993 and Letter from [REDACTED] MS, Genetic Counselor, [REDACTED] dated February 14, 2006.*

The record reflects that the applicant's spouse was born and raised in the United States. Were she to relocate abroad to reside with the applicant, she would have to adjust to a country with which she is not familiar. She would have to leave her family, her community, her church and her gainful employment as a teacher at Allendale Public School, thereby causing her career and professional disruption. The applicant's spouse would also be concerned about her and her child's medical well-being while in Tanzania, in light of the applicant's spouse's documented medical condition, due to

limited medical resources.¹ It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were removed from the United States. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing 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. The waiver application is denied.

¹As noted by the U.S. Department of State,

Medical facilities are limited and medicines are sometimes unavailable, even [REDACTED]
[REDACTED] There are hospitals on Zanzibar that can treat minor ailments. For any major medical problems, including dental work, travelers should consider obtaining medical treatment in Nairobi or South Africa where more advanced medical care is available.