



U.S. Citizenship
and Immigration
Services

[REDACTED]

H5

Date: DEC 05 2012

Office: NAIROBI, KENYA

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 APPLICANT:

[REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Nairobi, Kenya. 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 Somalia 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 attempting to procure admission into the United States by fraud or the willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to live with his U.S. citizen spouse and child.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director*, dated August 17, 2011.

On appeal, the applicant's attorney asserts that the applicant established that his qualifying relative would suffer extreme hardship and that therefore the waiver should be granted.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); briefs written on behalf of the applicant; letters from a social worker, a community service organization and management company regarding the qualifying spouse; Biographic Information (Form G-325A); an affidavit and letter from the qualifying spouse; medical documentation regarding the qualifying spouse; country-conditions materials regarding Kenya and Somalia; relationship and identification documents for the applicant, qualifying spouse and their child; documentation indicating that the applicant does not have a criminal record and confirming his prior spouse's death and an approved Form I-130. 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.

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

speaking 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 record indicates that the applicant attempted to gain access to the U.S. refugee program for resettlement in the United States as a refugee by materially misrepresenting his identity, family composition, and personal history. As a result of the applicant's misrepresentations, he is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The applicant has not disputed his inadmissibility.

The AAO finds that the applicant has not established that his qualifying spouse would suffer extreme hardship if she remained in the United States and he remained in Kenya. The qualifying spouse indicates that she is suffering financially and that the applicant would financially support their family. She describes her financial situation as living "paycheck-to-paycheck"; she supports herself and her daughter, as well as the applicant, since he has been unable to find work in Kenya. However, the record does not contain objective documentary evidence establishing the qualifying spouse's income and expenses, or her financial support for the applicant. Although the qualifying spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. 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)). Further, the qualifying spouse indicates that she earns one thousand dollars a month and that she has traveled to Kenya three times, each trip costing three thousand dollars. Though she refers generally to making "financial sacrifices" to travel to Kenya, the record lacks details concerning how she manages her financial responsibilities.

With regard to the qualifying spouse's emotional hardship, she states that the situation has been difficult for her and that "the emotional devastation has been extreme." She also indicates that she is suffering from anxiety and depression, which prevent her from learning English well. In addition, she worries about her daughter not growing up with a father and does not want to attend family gatherings without the applicant when others attend as couples. Similarly, she feels as if she is "left out" as a single mother in her community, and a letter from [REDACTED]

[REDACTED] states that she is experiencing a stigma in her community as a single mother. Her social worker also states that she is not surprised the qualifying spouse reports feeling isolated in her Somali community, given her experience with other Somali refugees. The applicant's spouse states that she feels the community is not supportive, but she has attended community counseling to deal with her depression. Further, evidence in the record shows that community services organizations have assisted her in many ways, including with her job search and psychologically. With respect to her emotional struggles, the qualifying spouse is clearly experiencing hardships based upon the separation from her husband. However, the record provides little detail regarding her emotional

hardships and there has been no diagnosis regarding her emotional condition. The applicant has not provided sufficient evidence to establish that the qualifying spouse would suffer financial or emotional hardships as a result of separation from the applicant that, considered in the aggregate, are extreme.

However, the AAO finds that the applicant has met his burden of showing that his qualifying spouse, a native of Somalia, would suffer extreme hardship if she relocated to Kenya or Somalia to be with him. The applicant states in her affidavit that her mother and siblings accompanied her to the United States, and the applicant's attorney indicates that she has no family ties outside the United States either in Kenya or Somalia. The qualifying spouse also indicates that she is not a Kenyan citizen, so it would be difficult for her to find a job if she returned to Kenya to live with her husband. The record indicates that the qualifying spouse fled Somalia because of civil war and lived in Kenya as a refugee before coming to the United States. She states that she fears for her safety in Somalia due to civil unrest, dangerous militia groups and her connection to the United States. The record contains country-conditions documentation for both Kenya and Somalia and sufficiently illustrates the extreme hardship that the qualifying spouse would face upon returning either to Somalia, the country that she fled from, or Kenya, to join the applicant.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation and the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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.