

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



U.S. Citizenship
and Immigration
Services

[REDACTED]

H5

DATE: **DEC 07 2012** OFFICE: SANTA ANA, CA

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the Field Office Director, Santa Ana, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Samoa, who was found to be inadmissible 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 procuring admission into the United States by fraud or willfully misrepresenting a material fact. The applicant is married to a U.S. citizen and he is the beneficiary of an approved Form I-130, Petition for Alien Relative. He seeks a waiver of his ground of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse and children.

In a decision dated August 16, 2011, the director determined the applicant had failed to establish that his U.S. citizen spouse would experience extreme hardship if the applicant were denied admission into the United States. The waiver application was denied accordingly.

Counsel asserts on appeal that the applicant did not willfully misrepresent material information on *his nonimmigrant visa application, because a representative completed the application for him; he did not speak or read English when he signed the application; he was unaware his application stated he was married to his girlfriend; and listing his girlfriend as his wife was not material to the applicant's eligibility for a tourist visa.* In the event that he is found to be inadmissible under section 212(a)(6)(C)(i) of the Act, counsel asserts that the applicant's U.S. citizen wife will experience extreme emotional and financial hardship if he is denied admission into the United States.

In support of these assertions, counsel submits letters written by the applicant, his wife and their church pastor; financial documentation; photographs; citizenship, identity and academic documentation for their children; and country-conditions information. 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 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.

A misrepresentation must be deliberate and voluntary; however, proof of intent to deceive is not required, and knowledge of the falsity of a representation is sufficient. *See Espinoza-Espinoza v. INS*, 554 F.2d 921, 925 (9th Cir. 1977). An act is done willfully if it is done intentionally and deliberately and if it is not "the result of innocent mistake, negligence or inadvertence." *Emokah v. Mukasey*, 523 F.3d 110, 116-117 (2nd Cir. 2008).

In the present matter the record reflects that, although the applicant was not married at the time he signed and filed his Form DS-156, Nonimmigrant Visa Application, the application states he was married in Samoa. The applicant was issued a B2 visitor visa, and he was subsequently admitted into the United States as a visitor on June 8, 2004.

The applicant asserts in a sworn declaration that a representative completed his nonimmigrant visa application because he did not speak or write English, and that he was unaware the representative stated he was married when he signed and submitted the application.

The AAO finds the applicant's assertions to be unconvincing. The record contains no evidence to corroborate claims that the applicant did not understand the questions on his nonimmigrant visa application, that a representative completed the application on his behalf, or that he was unaware of misrepresentations regarding his marital status. Moreover, the record reflects that, in addition to answering "married" to the nonimmigrant visa application question asking about his marital status, the applicant provided his spouse's name, [REDACTED] in response to the follow-up question asking for his spouse's full name. It is noted that [REDACTED] is the applicant's surname, and no explanation is provided as to how a representative obtained the name of the applicant's alleged spouse. It is further noted that the applicant answered "no" in response to the nonimmigrant visa application's question 39, which asks whether the application was prepared by another person on the applicant's behalf. In addition, although question 40 of the nonimmigrant visa application specifically requests the name, relationship, address and signature of any person preparing the nonimmigrant visa application, no information was provided in response to this question.

The burden of proof remains with the alien to show by a preponderance of the evidence that a willful material misrepresentation was not committed and that she or he is not inadmissible. See section 291 of the Act, 8 U.S.C. §1361. See also, *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978). Upon review of the totality of the evidence, the AAO finds that the applicant has not met his burden of showing he was unaware of any mistake on his nonimmigrant visa application, or that his signature on the application was "the result of innocent mistake, negligence or inadvertence." The AAO therefore concludes that the evidence establishes that the applicant's misrepresentation was willful in nature. The AAO finds further that the applicant's misrepresentation was material, in that marriage constitutes a strong domestic tie to an applicant's native country, and knowledge that the applicant was not married in Samoa may reasonably have affected a determination regarding his nonimmigrant intent and eligibility for a nonimmigrant visa. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

- (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.

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-Morales*, 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 Board of Immigration Appeals (Board) 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 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*, *supra* 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 is his qualifying relative under section 212(i) of the Act. Reference is made to hardship the applicant's U.S. citizen children would experience if the waiver application is denied. Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. Hardship to the applicant's children will therefore not be considered, except as it may affect the applicant's qualifying family member.

The applicant's wife states in sworn declarations that she and the applicant have been together for eight years; he became a father-figure to her four children after their biological father abandoned them; she depends on the applicant's love and emotional support; he helps care for their children; he prepares healthy meals for the family; and the possibility of the applicant returning to Samoa causes her "anxiety and enormous stress." She has been in the United States for 30 years, and her family, work and life are in this country. In addition, she will be unable to pay her rent, bills and over \$40,000 in student loan debt without the applicant's financial assistance. Her children are U.S. citizens, are used to the lifestyle in the United States, and she would be unable to afford to send her youngest children to school in Samoa. She also believes she will have to support the applicant financially if she remains in the United States, due to the depressed economy in Samoa, and because he is elderly and has limited job skills. For these reasons, she believes she also will be unable to find work to support her family in Samoa. In addition, she worries they will have nowhere to live because they no longer have a home or relatives in Samoa, and she worries about crime, inferior healthcare services and natural disasters there.

Employment evidence reflects the applicant's wife works full-time, earning \$10.50 an hour as a homecare provider. Between June and September 2011, the applicant worked full-time earning \$9 an hour. Federal income tax returns reflect the applicant's wife earned \$20,929 in 2010 and \$25,466 in 2009, and that the applicant earned \$1672 in 2010.

Academic records reflect the applicant's wife attended university between 2006 and 2008. Student loan evidence reflects she owes over \$33,000 in student loan debt, and that monthly repayment amounts have been modified due to her inability to pay. A copy of their apartment lease reflects the applicant and his wife owe \$1350 for monthly rent. The record also contains utility bills, including overdue bills dating back to 2010, and creditor offers to settle account balances at lower amounts.

Country-conditions reports reflect the minimum wage in Samoa is insufficient to provide a decent standard of living for a worker and family; health care facilities are adequate for routine medical treatment but inadequate for treatment of complex illnesses and life-threatening medical emergencies; and Samoa has a low level of crime, violent assaults are rare, but incidents of petty theft and robberies are common.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes the applicant's wife would experience hardship that rises above the common results of removal or inadmissibility if the applicant were denied admission into the United States and she relocated to Samoa to be with him. Although the applicant's wife is originally from Samoa, she has been in the United States for thirty years, has raised her family here, and she considers the United States her home. Her two youngest children are in high school and dependent upon her in the United States, and her two older children and the rest of her family are in the United States. In addition, her home and job are in the United States. The cumulative hardship upon relocation to Samoa rises above that normally experienced upon relocation after removal or inadmissibility.

The AAO finds, nevertheless, that the evidence in the record, when considered in the aggregate, fails to establish the applicant's wife would experience hardship that rises above the common results of removal or inadmissibility if the applicant were denied admission into the country and she remained in the United States. The record lacks evidence establishing the applicant's wife would experience emotional hardship beyond that normally experienced upon removal or inadmissibility if she remained in the United States. Moreover, the evidence fails to corroborate claims that the applicant contributes financially to their household, that his wife relies on him to meet expenses, or that his wife's financial situation would be different if the applicant remained in the United States. The evidence also fails to demonstrate that the applicant's wife depends on him to care for their high-school aged children, and the country-conditions evidence fails to corroborate concerns that the applicant would be unable to support himself financially in Samoa, or that he would be in danger in Samoa.

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. Furthermore, because 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 an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.