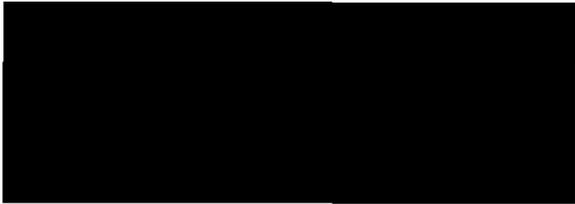


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



#5

DATE: **DEC 17 2012**

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:



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,

f

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 reflects that the applicant is a native of Somalia and current resident of Kenya who was 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 obtain a visa, other documentation or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. Specifically, the applicant misrepresented his identity, family composition and personal history in order to receive classification as a refugee for resettlement in the United States. The applicant does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility pursuant to sections 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.

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 Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 28, 2011.

In support of the appeal, counsel for the applicant submits a brief and duplicate copies of previously submitted documents in support of the Form I-601 submission. 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 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 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 contends that she will suffer emotional, physical and financial hardship if she resides in the United States while the applicant remains abroad due to his inadmissibility. In a statement, the applicant's spouse explains that she married her husband in February 2009 and has not been able to see him since late 2009 because she does not have the money to travel to Kenya and visit her husband. She also notes that it is hard for her to live without her husband and she is unhappy and alone. She contends that when she thinks about him she feels stressed, anxious and dizzy. The applicant's spouse further asserts that were her husband to reside in the United States, he would be able to find a job and could drive. She maintains that she is unable to work due to numerous medical conditions and her only income is Social Security. Finally, the applicant's spouse references that she worries about her husband in Kenya due to his health problems, the problematic economy and the unsafe environment. *Letter from* [REDACTED] dated March 2, 2011. On appeal, counsel contends that he applicant's spouse has been diagnosed with depression. *See Brief in Support of Appeal*, dated September 21, 2011.

To begin, the record does not establish that the emotional hardships the applicant's spouse asserts she is experiencing are beyond the hardships normally experienced as a result of separation from a spouse. Further with respect to counsel's assertion that the applicant's spouse has been diagnosed with depression, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As for the medical conditions referenced by the applicant's spouse, the only medical documentation provided on appeal is a duplicate of the items previously submitted with the Form I-601 establishing medical visits in December 2010 and February 2011. Said documentation does not establish the applicant's spouse's current medical conditions, the treatment plan and what specific hardships the applicant's spouse will experience were her husband to continue residing abroad. Further, with respect to the applicant's spouse's assertion that her husband is experiencing hardship abroad which in turn is causing her hardship, the AAO notes that the only documentation provided with respect to the applicant is a medical letter from January 2011 noting that the applicant was seen in October 2009 and October 2010, has been diagnosed with Left Hydrocele, was prescribed medication and was told to follow up with the clinic in six months. *See Letter from* [REDACTED] dated January 31, 2011. It has thus not been established that the applicant is experiencing hardship abroad which in turn is causing his spouse, the only qualifying relative, hardship.

As for the financial hardship referenced, the AAO notes that the applicant's spouse is receiving Supplemental Security Income benefits. Said documentation on its face does not establish that the applicant's spouse is experiencing financial hardship due to her husband's inadmissibility and no further documentation concerning her financial situation was submitted. 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 AAO notes that the applicant's spouse has three grown children residing in the United States, born in 1980, 1982 and 1990. It has not been established that they are unable to assist their mother emotionally and/or financially should the need arise. 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 applicant's spouse contends that she lived in Kenya from 1992 until 2003 and life was very difficult. She asserts that she had no money or food and was bullied. She further maintains that were she to relocate to Kenya she would not be able to make ends meet. Further, the applicant's spouse details that Kenya, where her spouse currently resides, or Somalia, her birthplace, are not safe and she would not be able to survive. Finally, the applicant's spouse details that her three children and brother live in the United States and long-term separation from them would be devastating. *Supra* at 1-2.

The record establishes that the applicant's spouse is 68 years old. She maintains that she fled the problematic country conditions in Somalia in 1992 to reside in Kenya, where she suffered numerous hardships. The applicant's spouse has been residing in the United States since 2003. Her three children and her sibling reside in the United States. Further, the record establishes the applicant's inability to work and her reliance on Supplemental Security Income benefits from the Social Security Administration. Further, counsel has provided documentation establishing the hardships Somali refugees are experiencing in Kenya. Finally, the AAO notes that the U.S. Department of State has issued Travel Warnings for both Kenya, where the applicant currently resides, and Somalia, where the applicant was born, based on the high rates of crime and violence. It has thus been established that the applicant's spouse would experience extreme hardship were she to relocate abroad to reside with 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 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 his spouse in this case.

The record, reviewed in its entirety, 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 or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships she would face rise to the level of "extreme" as contemplated by statute and case law.

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.