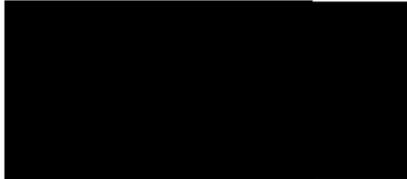


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



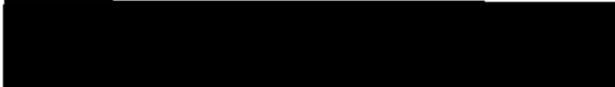
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Office: WASHINGTON, DC

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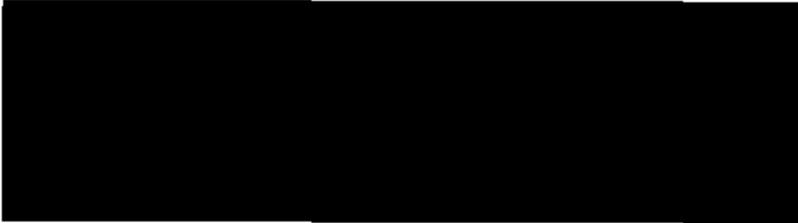
IN RE:

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:

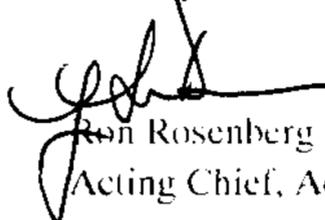


INSTRUCTIONS:

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, or a request for a fee waiver. 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 Acting Field Office Director, Washington, D.C., and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of the Democratic Republic of Congo and a citizen of Belgium 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 seeking to procure an immigration benefit through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and 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).

The acting field office director concluded that the applicant failed to establish that a denial of her waiver application would result in extreme hardship to her U.S. citizen spouse and denied the application accordingly. *See Decision of the Acting Field Office Director* dated June 8, 2011.

On appeal, the applicant, through counsel, claims that she is not inadmissible as charged. *See Appeal Brief* at 2-4. Alternatively, the applicant maintains that her inadmissibility would result in extreme hardship to her U.S. citizen husband. *Id.* at 4-6. Specifically, the applicant cites her husband's significant family ties in the United States; his mental and physical health; his business interests and financial circumstances; and his reluctance to relocate to Belgium. *Id.* at 5-6.

The record contains, in relevant part, the appeal brief cited above; affidavits executed by the applicant, her spouse, her four brothers-in-law's and her sister; a letter from a physician noting the applicant's spouse's worsening arthritis; information about the applicant's business enterprises; health records pertaining to the applicant; and the applicant's waiver application and supporting documents. The record in its entirety has been considered in reaching 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 Secretary of Homeland Security (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.

The applicant disputes the director's inadmissibility finding. Counsel maintains that the applicant did not commit fraud or willfully misrepresent a material fact when she applied for asylum. *See* Appeal Brief at 2. The applicant explains that she accurately claimed that she never lived in or attended school in Belgium. *See* Affidavit of Mwamvua Francine Baruti. She states that she only had temporary residence in Belgium. *Id.* She explains that she went to Belgium in 1996 intending to study, but changed plans when the class she enrolled in was cancelled. *Id.* Nevertheless, she claimed in her Belgium immigration documents that she was living and going to school because that had been her intention. *Id.* She states that she only stayed in Belgium, temporarily, to help her sister. *Id.* The applicant maintains that any misrepresentations were unintentional mistakes.

The Board of Immigration Appeals (the Board) has held that the term "fraud" in the Act "is used in the commonly accepted legal sense, that is, as consisting of false representations of a material fact made with knowledge of its falsity and with intent to deceive the other party." *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). The "representations must be believed and acted upon by the party deceived to" the advantage of the deceiver. *Id.* However, intent to deceive is not a required element for a willful misrepresentation of a material fact. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975).

A misrepresentation is material if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded. *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961). In proceedings to determine an applicant's eligibility for asylum, the applicant's previous residences, however temporary, are critical in determining whether an applicant has firmly resettled in a third country. *See Matter of D-X- & Y-Z-*, 25 I&N Dec. 664 (BIA 2012) (holding, in relevant part, that a facially valid permit to reside in a third country constitutes prima facie evidence of an offer of firm resettlement pursuant to section 208(b)(2)(A)(vi) of Act, 8 U.S.C. § 1158(b)(2)(A)(vi), even if the permit was fraudulently obtained). Even if the applicant did not have the intent to defraud when stating that she did not reside or study in Belgium, she intentionally omitted that information and therefore made a material misrepresentation. The AAO finds that the applicant's material misrepresentations render her inadmissible as charged under section 212(a)(6)(C)(i) of the Act.

The Act provides that a waiver of inadmissibility, under section 212(i) is dependent first upon a showing that the admissibility bar imposes an extreme hardship on a U.S. citizen or lawful permanent resident spouse or parent. 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*, 21 I&N Dec. 296 (BIA 1996).

The applicant's case is based on a claim of extreme hardship to the applicant's U.S. citizen husband. The record contains references to hardship that the applicant herself and her child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien or her children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant and her child will not be separately considered, except as it may affect the applicant's spouse.

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-I-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 record in this case contains identical affidavits executed by the applicant’s brothers in law stating that the applicant’s spouse is “extremely close to his daughter and would be emotionally devastated if he were no longer able to live with her.” *See* Appeal Exhibits # L, T, U, and V. These affidavits also note that the applicant assists in her spouse’s business and cares for him due to his arthritis. *Id.* The AAO notes that the applicant’s spouse’s brothers are lawful permanent residents or U.S. citizens living in the United States. The applicant’s sister states in her affidavit that she is a citizen and resident of Belgium. *See* Appeal Exhibit N. She states that the applicant’s spouse would find it difficult to obtain medical care for his arthritis in Belgium and that his credentials would not transfer such that he would find it impossible to attain employment. *Id.* The applicant’s spouse states that the applicant assists him at work and cares for him at home. *See* Appeal Exhibit I. He also states that he would not relocate to Belgium because of his arthritis, lack of adequate healthcare, and lack of business opportunities. *Id.* The applicant’s spouse’s doctor corroborates the applicant’s claim regarding her spouse’s arthritis.

The evidence in the record does not demonstrate that the applicant’s spouse would face extreme hardship due to the couple’s separation. The record indicates that the applicant’s spouse suffers from arthritis, a relatively common ailment. The record does not demonstrate that arthritis treatment is unavailable in Belgium. The record also does not demonstrate that only the applicant can assist her husband with daily chores or with his work. The applicant’s spouse has significant family ties in the United States, and some residing nearby. The evidence indicates that the applicant’s spouse is experiencing difficulties as a result of the applicant’s inadmissibility, but it does not demonstrate that the applicant’s spouse’s circumstances are different or more severe than those experienced by any other individual in his situation.

The record does not include financial documents to establish that the applicant's spouse's financial situation is different than that of individuals in similar circumstances. The applicant's spouse is also concerned about his emotional well-being. The record does not establish, however, that his situation is more severe than that of others facing separation from a loved one. The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse due to the couple's separation as required under section 212(a)(9)(B)(v) of the Act.

The applicant's spouse is concerned about his employment prospects and accessibility to health care in Belgium, but these concerns are common among individuals in the applicant's spouse's circumstances and do not rise to the level of extreme hardship. The evidence in the record does not establish that medical care for arthritis is unavailable in Belgium. The record also does not demonstrate that the applicant's spouse would be unable to obtain employment in Belgium, even if it is not in his chosen professional field. It is noted that relocation to Belgium would result in the couple's reunification. 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. at 886. The applicant has not established that relocation to Belgium would result in extreme hardship to her spouse. *See Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living [] and the difficulties of readjustment to that culture and environment . . . simply are not sufficient"). 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, supra*.

As the applicant has not established extreme hardship to a qualifying relative 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(a)(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.