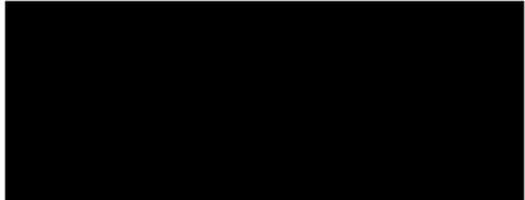


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



H5

DATE: DEC 28 2012 OFFICE: NAIROBI FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 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 applicant is a native and citizen of Ethiopia 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), due to his use of fraud or material misrepresentation in an attempt to procure a visa to the United States. The applicant seeks a waiver of inadmissibility (Form I-601) under 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.

In a decision dated February 17, 2012, the Field Office Director concluded that the applicant did not illustrate that his U.S. citizen spouse would suffer extreme hardship and the application for a waiver of inadmissibility was denied accordingly.

On appeal, the applicant states that the hardship that would result to his U.S. citizen spouse is extreme.

In support of the waiver application, the record includes, but is not limited to statements from the applicant, statements from the applicant's spouse, biographical information for the applicant and his spouse, medical records for the applicant's spouse, medical records for the couple's child, school records for the applicant's child, tax returns and credit card statements for the applicant's spouse, information concerning diabetes, country conditions information concerning Ethiopia, and documentation concerning the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible to the United States under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), which is a permanent grounds of inadmissibility. 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.

...

The record indicates that the applicant submitted fraudulent documents in support of his application for a diversity visa to the United States in 2006. The applicant states that the fraudulent documents that were submitted pertained to his ex-wife's education and that he was not aware that the documents were fraudulent. There is no evidence in the record, however, to support the applicant's assertion that he was unaware of the fraudulent documents submitted in support of his

visa application. The burden of proof is on the applicant to establish by a preponderance of the evidence that he is not inadmissible. See section 291 of the Act; see also *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978) and Memo, from Lori Scialabba, Act. Assoc. Dir., Dom. Ops., Donald Neufeld, Assoc. Dir., Refugee, Asylum and Int. Ops., Pearl Chang, Act. Chief, Off. of Pol. and Stra., U.S. Citizenship and Immigration Serv., to Field Leadership, *Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators* 13 (March 3, 2009). Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)). The AAO finds that to the extent that the applicant claims that his misrepresentation was not willful, this contention lacks merit. As a result, the applicant is inadmissible under section 212(a)(6)(C) of the Act for the use of fraud or material misrepresentation in an attempt to procure a visa to the United States.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides a waiver for section 212(a)(6)(C) of the Act. Section 212(i) of the Act states that:

- (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 the applicant's U.S. citizen or lawful permanent resident spouse or parent. The applicant has a U.S. citizen spouse. Hardship to the applicant or his U.S. citizen child is not considered in section 212(i) waiver proceedings unless it is shown to cause 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 deportation, 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, 885 (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 1292, 1293 (9th Cir. 1998) (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.

On appeal, the applicant states that the evidence, in the aggregate, demonstrates that his U.S. citizen spouse would suffer extreme hardship if the waiver were not granted. In regards to the hardship that the applicant's spouse would suffer if she were to remain separated from the applicant, the applicant states that his spouse is suffering from emotional, physical, and financial hardship as a result of the applicant's inadmissibility. The AAO notes that the applicant and his spouse, a native of Ethiopia who became a naturalized citizen of the United States in February 2010, were married in Ethiopia on April 3, 2009. The applicant's spouse gave birth to the couple's son in the United States on November 19, 2009. The record indicates that the applicant's spouse is suffering from adjustment disorder, depression and migraine headaches. Medical records indicate that she has been prescribed Prozac, ibuprofen, methocarbamol (muscle relaxant), prochlorperazine (anti-nausea) and dulcolax (constipation) as a result of numerous visits to urgent care, and that she has been advised to seek counseling. There is no indication in the record that the applicant's spouse has sought counseling. Moreover, other than the applicant's spouse's own statements, there is no indication in the record to what her condition is attributable. The record also indicates that the applicant's spouse suffers from diabetes mellitus. The applicant's spouse states that her condition continues to deteriorate. However, there is no indication in the record of the applicant's spouse's condition. The applicant's spouse's medical records simply state that she has a diagnosis of diabetes mellitus. Significant conditions of health, particularly when tied to unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record, however, is insufficient to establish that the applicant's spouse suffers from such a condition. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. Again, 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 at 165. The AAO notes the documentation in the file indicating that the applicant's spouse was at fault in a car accident on July 18, 2010. There is no basis, however, to conclude that the applicant's spouse's accident was a result of her emotional and physical hardship.

In regards to the financial hardship claimed by the applicant's spouse, the record indicates that the applicant's spouse's reported income on her federal tax returns dropped from \$31,216 in 2008 to \$16,945 in 2010. The AAO notes the birth of the applicant's spouse's child on November 19, 2009. The applicant's spouse has also provided documentation of her credit card debt. There is no indication in the record, however, of the applicant's spouse's expenses or her stated financial support of the applicant in Ethiopia. It is not possible to determine the degree of financial hardship suffered by the applicant's spouse as a result of the applicant's inadmissibility without more information on her expenses and the potential contribution of the applicant to his spouse's financial situation. Although the applicant's spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N at 175. The AAO recognizes that the applicant's spouse is suffering

from emotional hardship, but this hardship does not rise to the level of extreme beyond what is normally experienced by individuals separated due to immigration violations. The evidence of record, when considered in the aggregate, does not indicate that the applicant's spouse will suffer from extreme hardship as a result of separation from the applicant.

The applicant's spouse also states that she would suffer extreme hardship if she were to relocate to her native Ethiopia. In particular, the applicant's spouse states that she would not be able to obtain appropriate health care in Ethiopia. She also emphasizes that she wants a better education for her child and that she would not be able to afford private schools in Ethiopia. In regards to the applicant's spouse's health, the AAO notes that the applicant's spouse has spent time in Ethiopia to visit the applicant and conceive her child. The record also indicates that the applicant's spouse has resided in the United States for eight years and prior to that she presumably resided in Ethiopia. There is no indication in the record whether she had problems treating her condition while in Ethiopia when visiting the applicant or prior to her residing in the United States. The applicant's spouse also states that she cannot tolerate spicy food and has suffered from traveler's diarrhea in Ethiopia. As noted above, significant conditions of health, particularly when tied to unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record, however, is insufficient to establish that the applicant's spouse suffers from such a condition. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. The record does not contain any documentary evidence of the applicant's spouse's family ties in the United States or lack of those ties in her native Ethiopia. The AAO notes that the applicant's spouse reported supporting one of her parents and a nephew on her 2008 tax returns, but no additional information has been provided to illustrate the applicant's family ties in the United States. Again, 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 at 165. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's spouse relocate to Ethiopia, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Although the applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in

section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases.

Considered in the aggregate, the hardship to the applicant's spouse does not rise to the level of extreme beyond the common results of removal. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez*, 96 F.3d at 392 (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Matter of Pilch*, 21 I&N Dec. at 631. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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. 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.