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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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**U.S. Citizenship
and Immigration
Services**



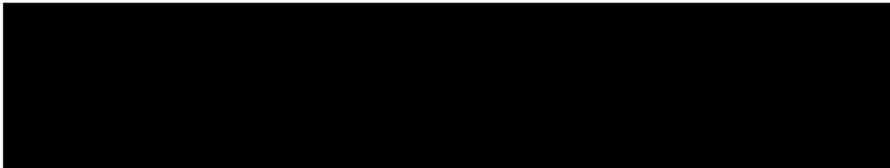
HS

DATE: **FEB 23 2012** OFFICE: NAIROBI, KENYA FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Immigration and Nationality Act section 212(i); 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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for 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 applicant, a native and citizen of Kenya, was found inadmissible under INA § 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresentation due to her attempted procurement of a visa by willfully misrepresenting a material fact. The applicant is the beneficiary of an approved Petition for Alien Fiancé (Form I-129F) filed by her U.S. citizen fiancé. The applicant seeks a waiver of inadmissibility pursuant to INA § 212(i), 8 U.S.C. § 1182(i) based on extreme hardship to her U.S. citizen fiancé.

On October 27, 2009, the Field Office Director concluded that the hardship that the applicant's U.S. citizen fiancé would suffer did not rise to the level of extreme as required by the statute.

On appeal, counsel for the applicant asserts that the applicant did not make a material representation and that she should not be required to prove extreme hardship to her U.S. citizen fiancé.

In support of the waiver application, the record includes, but is not limited to, letters from the applicant, a letter from the applicant's U.S. citizen fiancé, biographical information for the applicant and her fiancé, correspondence between the applicant and her fiancé, and documentation of 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 AAO will first address the question of whether the applicant is admissible to the United States.

The Field Office Director determined that the applicant was inadmissible under INA § 212(a)(6)(C), which 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.

...

A misrepresentation is generally material only if by making 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 must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, which is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys*, 485 U.S. 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).

The U.S. Department of State determined that the applicant presented false documentation in order to procure a student visa to the United States. Specifically, it was determined that the photograph accompanying the [REDACTED] submitted by the applicant in connection with a prior student visa application was not in fact a photograph of the applicant. As such, it was determined that the test results submitted by the applicant to support her eligibility for the visa sought were fraudulent. Upon review, we find that the evidence in the record supports the finding of inadmissibility. The applicant has not submitted any documentation, aside from her own statements, to prove that the documentation determined to be fraudulent was not, in fact, fraudulent. The burden of proof remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Rivero-Diaz*, 12 I&N Dec. 475 (BIA 1967); *Matter of M-*, 3 I&N Dec. 777 (BIA 1949). As the fraudulent documentation submitted was directly relevant to the applicant's eligibility for the visa, the misrepresentation was material. As such, the AAO finds that the applicant is inadmissible under INA § 212(a)(6)(C)(i) for a willful misrepresentation of a material fact.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section 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.

Pursuant to 22 C.F.R. § 41.81, the applicant is eligible to apply for a waiver of inadmissibility as the fiancée of a U.S. citizen. 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 in this case is the applicant's U.S. citizen fiancé. 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).

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.

In this case, the qualifying relative is the applicant's U.S. citizen fiancé. The statute does not allow for consideration of hardship to the applicant or the applicant's child, except in the instance that the hardship to them results in hardship to the qualifying relative.

The applicant's fiancé states that he will suffer financial hardship due to the financial obligations of supporting his wife in Kenya as well as covering his own expenses in the United States, which he states includes student loan debt. The applicant's fiancé states that he presently supports the applicant financially. The record, however, does not contain any evidence of support to the applicant by her fiancé that would result in hardship. The only documentation of support is one wire transfer from the qualifying relative to the applicant in August 2007 for \$50.00. Additionally, there is no evidence in the record of the applicant's fiancé's claimed financial debt in the United States. Because the applicant has not provided any documentary evidence of the claimed financial hardship, it is not possible to make the determination that the applicant's fiancé would suffer any financial hardship if the applicant is not admitted to the United States. The applicant's fiancé also states that he and the applicant are expecting a child and that he will be emotionally affected if the child and the applicant must live without him. There is no documentation in the record, however, to support the claim of emotional hardship or the applicant's claim that she is pregnant or has given birth. The applicant did not provide a letter from a physician or evidence of prenatal care even though she stated that she was due to give birth the month of submission of this application. It is not possible to make the determination that the applicant's fiancé would suffer emotional hardship in relation to a fact that has not been established in the record. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the applicant has not met her burden of proof to document the hardship that her U.S. citizen fiancé faces if she is not admitted to the United States.

We must also consider whether the applicant's U.S. citizen fiancé would suffer extreme hardship should he relocate to Kenya to reside with the applicant. The applicant's fiancé is a native of Kenya who became a citizen of the United States through naturalization in 2007. He states that he cannot reside in Kenya at this time due to the high crime and high unemployment rate in that country. The applicant, however, did not provide any evidence of the conditions in Kenya. Even were the AAO to take administrative notice of the country conditions there, it is the applicant's burden to prove how her qualifying relative would specifically be affected by those conditions. There is no evidence in the record to illustrate that the applicant's fiancé would be unable to obtain employment in Kenya or that he does not have sufficient resources to support himself there. Moreover, there is no indication in the record of the applicant's fiancé's current family ties in Kenya or the United States. The applicant has not met her burden in demonstrating that her qualifying relative would suffer extreme hardship in the event that he relocates to Kenya.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her qualifying relative as required under section 212(i) of the Act. As 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 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.