



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

115

DATE: NOV 05 2012

OFFICE: MILWAUKEE

FILE: [REDACTED]

IN RE: GILBERT MBOGA

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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Milwaukee, Wisconsin and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant 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 attempting to procure entry to the United States by fraud or willful misrepresentation. The applicant is a beneficiary of an approved Petition for Alien Relative, as the spouse of a U.S. citizen, who seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative. The Field Officer Director denied the application accordingly. *See Decision of the Field Office Director*, dated May 20, 2011.

On appeal, counsel for the applicant asserts that the supporting documentation in the record establishes that the applicant's spouse would suffer extreme emotional and physical hardship upon separation from the applicant. Counsel further asserts that if the applicant's spouse relocated to Kenya to reside with the applicant, she would suffer from the country conditions in Kenya and leave her family and medical insurance behind in the United States.

In support of the waiver application and appeal, the applicant submitted a letter, a letter from the applicant's spouse, letters of support, medical documentation concerning the applicant's spouse, financial documentation, a letter from the applicant's spouse's employer, identity documents, and background information concerning Kenya. 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:

- (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...

The applicant attempted to procure entry to the United States by submitting a Form DS-156, Nonimmigrant Visa Application, signed July 7, 2008. On this application, the applicant indicated that he was married and his spouse's name was [REDACTED], with a date of birth of [REDACTED] 1975. The applicant later admitted that he was not married and that his only marriage took place on December 27, 2008, with his current spouse [REDACTED]. When asked about the discrepancy on his Form DS-156, the applicant asserted that he was distracted and accidentally checked the "married" box, rather than the "single" box. The applicant contended that he was speaking with his mother while filling out the form and that the death of his father had taken place only a few days earlier. Through counsel, the applicant also erroneously asserted that he had mistakenly checked the wrong box, but that he had not filled out any information concerning his claimed spouse's name or date of birth. The applicant later submitted his father's death certificate, which recorded that his father passed away on April 30, 2008, months prior to the applicant's submission of his Form DS-156. Accordingly, the applicant has not established that he was erroneously deemed 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 attempting to procure entry to the United States by fraud or willful misrepresentation. Counsel for the applicant does not dispute the applicability of this ground of inadmissibility on appeal.

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 record reflects that the applicant is a 43 year-old native and citizen of Kenya. The applicant’s spouse is a [REDACTED] year-old native and citizen of the United States. The applicant is currently residing with his spouse in [REDACTED]

The applicant’s spouse asserts that she would be devastated both emotionally and physically if she were separated from the applicant. The applicant’s spouse contends that the applicant has assisted her in losing weight by cooking and controlling what she eats and that she would be miserable and unable to maintain her weight loss without him. The applicant’s spouse also asserts that she is pre-diabetic and her weight loss will assist her in preventing diabetes. The record does contain medical documentation from the applicant’s spouse’s annual physical exams of 2008 and 2009 indicating that the applicant’s spouse is morbidly obese. It is noted that there is no supporting medical documentation indicating that the applicant’s spouse has been diagnosed as pre-diabetic. There is also no information concerning the extent to which the applicant’s spouse could rely upon other resources, both personal and professional, to assist her in continuing her weight loss and maintaining her diet. It is acknowledged that separation from a spouse nearly always results in hardship for both parties and there is evidence that the applicant’s spouse would suffer from some level of hardship upon separation from the applicant. However,

the evidence is insufficient to find that the applicant's spouse would suffer a level of hardship due to separation beyond the common results of the removal of a spouse.

Although the depth of concern and anxiety 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. While 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 exists.

The applicant's spouse asserts that she cannot relocate to Kenya to reside with the applicant because she would be leaving behind her ties in the United States. The record reflects that the applicant's spouse is employed as a sales support analyst for [REDACTED]. A letter from her employer states that the applicant's spouse has been employed with the company since April 2007. The applicant's spouse also asserts that she would have to leave her parents and sisters behind in the United States if she relocated to Kenya. The record reflects that the applicant's spouse resides near her parents in Wisconsin and two of her sisters and takes care of her parents when they are ill. The applicant's spouse contends that her flexible position at work allowed her to take time off to help her mother through breast cancer and her father through surgery. It is noted that the applicant's spouse's parents both submitted letters of support indicating that their family is very close and the applicant's spouse's father's medical ailments, including knee replacements and breathing difficulties, would prevent him from travelling to Kenya to visit the applicant's spouse.

The applicant's spouse also asserts that she suffers from medical ailments including keratoconus in her right eye, polycystic ovary syndrome, and pre-diabetes and takes medication for her ailments. The applicant submitted supporting medical documentation with diagnoses of morbid obesity, polycystic ovarian syndrome, and keratoconus. Her annual physical exam from October 2009 includes prescriptions for glucophage and aldactone. The applicant's spouse asserts that in the United States she has employee health insurance to address her medical ailments and medications, but that she would lose her eligibility if she left the United States. The record contains a letter from the applicant's spouse's employer stating that they would be unable to continue to employ the applicant's spouse if she relocated to Kenya.

The applicant asserts that his spouse is unfamiliar with the language, customs, and environment of Kenya, and she would face safety issues if she relocated. The record reflects that the applicant's spouse is a native of the United States and it is noted that English is one of the official languages of Kenya. However, it is also noted that the Department of State travel warning for Kenya, dated July 5, 2012, indicates that there is a continuing and heightened threat of terrorism in Kenya as well as violent crime in certain areas. In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if she relocated to Kenya.

The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 the qualifying relative in this case.

The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse 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 this 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.