

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

[REDACTED]

DATE:

NOV 06 2012

OFFICE: COLUMBUS, OHIO

File: [REDACTED]

IN RE:

Applicant: [REDACTED]

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 with the field office or service center that originally decided your case by filing a 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, Columbus, Ohio and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mali 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 a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant 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. See *Decision of the Field Office Director*, dated December 16, 2010. The applicant filed a motion to reopen and reconsider which was denied by the Field Office Director on March 11, 2011.

On appeal, counsel asserts that the applicant is not inadmissible and, in the alternative, if the waiver is not granted the applicant's U.S. citizen spouse will suffer extreme hardship. See *Notice of Appeal or Motion*, received April 11, 2011.

The record contains, but is not limited to: Form I-290B, counsel's memorandum in support of the appeal, and earlier letters in support of the waiver and motion; various immigration applications and petitions; a hardship affidavit; a statement from the applicant; medical records; employment and income-related documents; birth and marriage certificates; Mali country conditions documents; and documents related to the applicant's inadmissibility. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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.

In *Kungys v. United States*, 485 U.S. 759 (1988), the Supreme Court found that the test of whether concealments or misrepresentations are "material" is whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, the legacy Immigration and Naturalization Service's (now United States Citizenship and Immigration Services) decisions. Additionally, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements for a material misrepresentation are as follows:

A misrepresentation made in connection with an application for a visa or other documents, or with 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 or she be excluded.

*Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (AG 1961).

The record shows that in order to procure admission to the United States, the applicant signed a non-immigrant C-1 visa application on May 26, 2000 in which he falsely claimed he would only transit through the United States en route to the Bahamas. Subsequently, during a June 5, 2000 consular interview, the applicant falsely claimed that he intended to remain in the United States for one to three months when his true intention was to remain indefinitely. Based upon the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i).

Counsel asserts that the applicant is not inadmissible because the friend of his father, an official in the Mali Ministry of Foreign Affairs, who secured the visa for him for a fee of \$4,500, "was apparently working with a consular officer at the U.S. Embassy to improperly sell visas." Counsel submits no documentary evidence corroborating this very serious allegation. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *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)). Counsel speculates that the "consular officer did not have clean hands" and that while the applicant knowingly misrepresented that he would remain in the United States only briefly, this was not relied upon by the consular officer "to issue a transit visa, as she knew this to be a false statement." As previously noted, counsel has submitted no evidence demonstrating that the consular officer knew that the applicant was lying and issued the visa anyway as part of a visa selling scheme. Counsel correctly contends that if the applicant's statement that he intended to remain in the United States for one to three months was true, a transit visa should not have been issued. This, however, is not the proper test for whether a misrepresentation is material under *Kungys*. Rather, it is that the applicant is excludable on the true facts that he intended to immigrate to the United States. His misrepresentation shut off a line of inquiry into his intent to immigrate which would have resulted in proper determination that he be excluded. The applicant has failed to demonstrate that he did not have the requisite knowledge and intent to misrepresent in order to obtain a visa with which he intended to enter, and in fact did enter the United States as an immigrant for an indefinite period. Pursuant to Section 291 of the Act, 8 U.S.C. § 1361, the burden of proving eligibility rests solely on the applicant. Accordingly, the AAO concurs with the Field Office Director that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

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. In the present matter, the applicant has not established that a purpose would be served in approving the Form I-601 application. Accordingly, the appeal will be dismissed.

Section 212(i) of the Act provides, in pertinent part:

- (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 a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only 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 record reflects that the applicant’s spouse is a 29-year-old native and citizen of the United States who has been married to the applicant since September 2008. They currently have no children. Addressing separation, the applicant’s spouse states only that she is not sure how she would be able to cope with the applicant’s absence. She writes that she has had periodic mental health problems, has been diagnosed with depression and bi-polar disorder, and receives treatment for these conditions when they occasionally become severe. No corroborating documentary evidence has been submitted and the applicant’s spouse does not specify the nature of the treatment she has received. The applicant’s spouse maintains that she was diagnosed with Type II Diabetes when she was 16-years-old and remains insulin-dependent. She explains that she also has a large fibroid tumor which must be surgically removed. [REDACTED] writes that she recommends surgery which they will proceed with after the applicant’s spouse consults an adult endocrinologist concerning her diabetes. The applicant’s spouse does not articulate a nexus between her health conditions and potential separation from the applicant. Counsel contends that if the applicant’s spouse does not join the applicant in Mali, the only option remaining is for her to terminate their marriage. Counsel offers no further explanation or alternatives, and the applicant’s spouse does not address the termination of her marriage or specify any hardship she might experience as a result of separation from the applicant.

The AAO acknowledges that separation from the applicant would cause various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant's spouse states that she has resided her entire life in the United States where she enjoys close relationships with her immediate and extended family members, particularly her mother, brothers and their children. She writes that she recently started a new job with a large company and looks forward to the opportunity to advance her career there. The applicant's spouse explains that she has never traveled outside the United States other than two brief visits to Canada, and she rarely ventures beyond the Columbus, Ohio area. She states that in Mali she would not be able to speak the language, understand the culture, secure employment or have any support system beyond her husband, and she expresses concern that life in an Islamic society is completely unfamiliar to her and that she herself is not Muslim. The applicant's spouse points to travel warnings by the U.S. State Department and expresses fear that she would be at risk for kidnapping. In addition to reviewing the country conditions documents submitted, the AAO has reviewed the State Department's most recent travel warning for Mali, dated August 29, 2012. Therein U.S. citizens are warned of continuing threats of attacks and kidnappings of Westerners in the north of the country and continued challenges including food shortages, internally displaced persons, and the presence in northern Mali of factions linked to Al-Qaeda in the Islamic Maghreb (AQIM). The report adds that As a result of safety and security concerns, some organizations, including foreign companies, NGOs, and private aid organizations, have temporarily suspended operations in Mali or withdrawn some family members and/or staff. The applicant's spouse states that medical care in Mali is very limited and she has great concerns about access to appropriate medication and treatment for her diabetes and other conditions that require ongoing monitoring. She points to a U.S. State Department report in the record that confirms that most U.S. medicines are unavailable in Mali, medical facilities are limited, and psychiatric care is non-existent. The applicant's spouse fears that in light of these great difficulties, her depression would spiral out of control and no help would be available to her.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including that she has never resided in or even visited Mali; she has lived her entire life in the Columbus, Ohio area among her close-knit family; adjustment to a country and culture so different from her own in which she cannot speak the language and is not a member of the majority religion; the unlikelihood she would be able to secure employment under such circumstances and that she currently enjoys steady employment in the United States and employment-related benefits; separation from close family and community ties in the United States; her significant medical conditions and the lack of comparable medical care, facilities, medication and treatment for her conditions in Mali; and stated safety concerns. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to Mali to be with the applicant.

Although the applicant has demonstrated that his qualifying relative spouse would experience extreme hardship if she were to relocate to Mali to join him, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a

qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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.

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.<sup>1</sup>

**ORDER:** The appeal is dismissed.

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<sup>1</sup> It is further noted that the record reflects that, on October 22, 2009, the applicant filed an *Application to Register Permanent Residence or Adjust Status* (Form I-485) simultaneously with the *Petition for Alien Relative* (Form I-130) filed by his U.S. citizen wife. USCIS approved the Form I-130 on January 28, 2009. As the applicant was admitted to the United States as a C-1 crewman on May 9, 2006, and has not established his eligibility under section 245(i) of the Act, the applicant is presently unable to adjust his status to lawful permanent residence in the United States. *See* 8 C.F.R. § 245.1.