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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: **SEP 05 2012**

OFFICE: PANAMA CITY

FILE:

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. 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, Panama City, Panama, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guyana who in 2007 represented he was married in an application for a nonimmigrant visa, and in 2009 claimed he was not married when he applied for an immigrant visa as an unmarried son of a U.S. Citizen. He 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 having procured a visa to the United States through fraud or misrepresentation. The applicant is the son of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to 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 parent.

The Field Office Director concluded that the applicant failed to establish the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated September 30, 2010.

On appeal, counsel for the applicant contends that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act because his differing statements on his marital status were due to ambiguity in Guyanese law, it did not constitute fraud, his statements were not willful, and his explanation to the consular officers constituted a timely retraction.

The record includes, but is not limited to, documentation on marriage laws in Guyana, evidence of birth, marriage, divorce, residence, and citizenship, statements from the applicant and his parent, and other applications and petitions filed on behalf of the applicant. 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 [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.

In the present case, the record reflects that the applicant was legally divorced from [REDACTED]. In an affidavit the applicant asserts that in 1998 he entered into a common law marriage with [REDACTED], a person who he continues to consider as his wife. He explains that because this was a common law relationship, he did not have a marriage certificate and it would be impossible to obtain a divorce. In a nonimmigrant visa application filed in March 2007 the applicant listed [REDACTED] as his wife.<sup>1</sup> The applicant later applied for an immigrant visa as the beneficiary of an approved Form I-130 Petition for Alien Relative filed by his U.S. Citizen parent. He was placed in the first preference category as the unmarried son of a U.S. Citizen. See section 203(a)(1) of the Act. In the immigrant visa application, he indicated that he was divorced and that "Including my present marriage I have been married 1 time." See Form DS230 signed March 31, 2009.

The Field Office Director found that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act because in an 2007 application for a nonimmigrant visa he represented to consular officers that he was married when in fact he was not. Counsel for the applicant contends that his statements with respect to his marital status do not make him inadmissible because he did not make any misrepresentations, and because Guyanese law is ambiguous on common law marriage. Articles on common law marriage in Guyana are submitted in support.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Counsel for the applicant submitted a copy of a 2006 "As the Consul" article, which states, "[a] common law marriage will not be accepted for visa qualification or immigration purposes, unless it is recognized in the jurisdiction of residence." *Ask the Consul: Visas and Common-law Spouses*, U.S. Department of State, November 2, 2006. Although the applicant asserts that he entered into a common law marriage with [REDACTED] in 1998, he has provided no evidence of this relationship. 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)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, the record also does not demonstrate that the relationship the applicant entered into is recognized by the jurisdiction of his

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<sup>1</sup> The AAO notes that [REDACTED] became a lawful permanent resident on July 1, 2007.

residence. Consequently, the applicant has not met his burden of proof to establish that when he applied for his nonimmigrant visa, he did not misrepresent himself and he was in fact married as claimed.

Counsel further claims that the applicant's misrepresentation was not willful because he was confused about his marital status. However, this is not supported by the record. The requirement that the misrepresentation is made willfully is satisfied by a finding that the misrepresentation was deliberate and voluntary. *Espinoza-Espinoza v. INS*, 554 F.2d 921, 925 (9th Cir.1977).

To establish eligibility for a non-immigrant B1/B2 visa, section 101(a)(15) of the Act states, in pertinent part:

(B) an alien...having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

The FAM further provides:

The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.

By claiming he was married in his application for a B-1/B-2 visa, the applicant represented that he had a close family tie, when, as explained above, he did not have a valid marital relationship recognized under the jurisdiction of his residence. As such, the applicant indicated to consular officers that if he were granted the B-1/B-2 visa he would have a strong inducement, namely his spouse, to return to Guyana. In contrast, when he applied for his immigrant visa in April 2008 as the son of a U.S. Citizen, the applicant claimed he was not married. At that time, the applicant's priority date was current for unmarried sons and daughters of U.S. Citizens, but not for married sons and daughters of U.S. Citizens. *See Visa Bulletin April 2008, U.S. Department of State*. Consequently, if he informed consular officers that he was married, he would not be eligible at that time for an immigrant visa.

The applicant did not specify on his nonimmigrant visa application that he was involved in a common law relationship. Instead, the applicant chose to present himself as married when it benefitted him in his B-1/B-2 nonimmigrant visa application, and subsequently chose to claim he was unmarried so he could apply for and obtain an immigrant visa in April 2008. As such, the record does not indicate that the applicant was merely confused about his marital status; it reflects

that the applicant deliberately and voluntarily chose to present himself in the most favorable light in his immigration applications.<sup>2</sup>

Counsel additionally contends that the applicant made a timely retraction of his statement on his DS 230 form. The AAO notes that a timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for section 212(a)(6)(C)(i) ineligibility. 9 FAM 40.63 N4.6. Whether a retraction is timely depends on the circumstances of the particular case. *Id.* In general, it should be made at the first opportunity. *Id.* If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview. *Id.*

The doctrine of timely recantation is of long standing and ameliorates what would otherwise be an unduly harsh result for some individuals, who, despite a momentary lapse, simply have humanity's usual failings, but are being truthful for all practical purposes. *See Llanos-Senarillos v. United States*, 177 F.2d 164, 165-66 (9th Cir. 1949). The BIA has recognized the virtue of applying that principle when an alien "voluntarily and prior to any exposure of the attempted fraud corrected his testimony that he was an alien lawfully residing in the United States." *Matter of M*, 9 I. & N. Dec. 118, 119 (BIA 1960); *see also Matter of R*, 3 I. & N. Dec. 823, 827 (BIA 1949). In addition, the BIA has found "recantation must be voluntary and without delay." *Matter of Namio*, 14 I. & N. Dec. 412, 414 (BIA 1973). And, when the so-called retraction "was not made until it appeared that the disclosure of the falsity of the statements was imminent [, it] is evident that the recantation was neither voluntary nor timely." *Id.* The Field Office Director found that the applicant misrepresented himself on his 2007 B-1/B-2 application, and not on his 2008 immigrant visa application as counsel asserts. The record does not indicate that the applicant retracted his statements during his B-1/B-2 interview. Consequently, the AAO finds that the applicant did not make a timely retraction.

The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured a visa to the United States through fraud or misrepresentation. The applicant's qualifying relative is his U.S. Citizen parent.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

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

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<sup>2</sup> Counsel also asserts that the applicant has not committed fraud. As the AAO finds the applicant is inadmissible for willful misrepresentation the issue of whether the applicant is inadmissible for fraud will not be addressed in this decision.

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 applicant does not contest on appeal or provide documentation to demonstrate that the Field Office Director erred by not finding extreme hardship to a qualifying relative given the applicant's inadmissibility. Therefore, the AAO finds that the applicant has failed to establish the existence of extreme hardship to a qualifying relative.

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 his U.S. Citizen parent 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.