



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: APR 09 2013

Office: COLUMBUS, OHIO

FILE: [REDACTED]

IN RE: [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 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Columbus, Ohio. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision affirmed and the waiver application denied.

The applicant is a native of Sierra Leone and citizen of the United Kingdom 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 attempting to procure admission into the United States by fraud or the willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to live with his U.S. citizen spouse and children.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director*, dated July 6, 2011. Thereafter, the applicant appealed the Field Office Director's decision, and the AAO dismissed the appeal on December 8, 2012.

In the motion to reopen, counsel in his brief asserts that evidence missing from the applicant's original application regarding the qualifying spouse's medical and psychological difficulties supports finding that she would experience extreme hardship if the applicant departed from the United States.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); two Notices of Appeal or Motion (Forms I-290B); a letter from the qualifying spouse; relationship and identification documents for the applicant, qualifying spouse and their children; academic documents regarding their child; insurance documents; financial documentation; an Application to Register Permanent Residence or Adjust Status (Form I-485) and an approved Form I-130. With the applicant's motion to reopen¹, counsel provides a brief and letter, a psychological evaluation and doctor's letter regarding the qualifying spouse, and banking statements for the applicant and qualifying spouse. The entire record was reviewed and considered in rendering this decision.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Counsel on motion asserts that the qualifying spouse's medical and psychological conditions would cause her extreme hardship upon the applicant's removal from the United States. Because counsel submits new

¹ Counsel indicates in the motion's Form I-290B, Part 2 that the applicant is filing a motion to reopen. However, in his brief counsel refers to a motion to reopen and reconsider. Although the Form I-290B identifies the motion more narrowly, we will consider the motion a motion to reopen and reconsider.

evidence of hardship on motion and has satisfied the requirements of 8 C.F.R. § 103.5(a)(2), the AAO grants the motion to reopen the proceedings.

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, in pertinent part:

- (1) The Attorney General [now the Secretary of Homeland Security (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.

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. The applicant's wife is the only qualifying relative in this case. 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 indicates that the applicant was refused entry into the United States on December 16, 2009, for willfully misrepresenting a material fact when he answered negatively regarding whether he had previously been denied a visa on his Nonimmigrant Visa Waiver Arrival/Departure Record (Form I-94W). However, he was later paroled into the United States for humanitarian reasons until January 30, 2010, and he has not departed. Therefore, as a result of the applicant’s misrepresentation, he is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The applicant and his attorney have not disputed his inadmissibility.

The AAO found in its prior decision that the applicant failed to establish that his qualifying spouse would suffer extreme hardship if she remained in the United States and he were removed to the United Kingdom or Sierra Leone. On motion, the applicant provides supplemental evidence to demonstrate that his qualifying spouse would suffer medical and psychological hardships as a result of her separation from him. A doctor indicates in his letter that the qualifying spouse is pregnant with a high-risk pregnancy and that she will be delivering by repeat caesarean section in July 2013. The doctor explains that she “has a history of low-lying placentas and oligohydramnios.” According

to the psychological evaluation, the applicant's spouse had a miscarriage in 2012 and she suffers from hypertension and headaches. However, 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. With regard to the qualifying spouse's psychological hardships upon separation, the psychologist concluded that she is in a "moderately-severe depressed state with moderate to severe anxiety." He states, "Her physical and mental health conditions could get much worse under the circumstances of losing [the applicant] due to deportation." However, the psychological evaluation failed to fully explain how the qualifying spouse's psychological hardships rise beyond the ordinary consequences of separation from family members.

With respect to the applicant's spouse's potential financial hardship, on motion the applicant provides bank statements for himself and his qualifying spouse indicating low balances. This supplemental evidence, while informative concerning these accounts, without more does not demonstrate that the qualifying spouse will suffer financial hardship upon relocation. Furthermore, the AAO indicated in its prior decision that the record failed to contain evidence demonstrating whether the applicant could financially contribute to his qualifying spouse from the United Kingdom. According to the applicant's sworn statement and his Biographic Information (Form G-325A), the applicant worked in the United Kingdom for over ten years. However, no new evidence was submitted to address these concerns. As such, the AAO affirms its prior decision finding that the applicant failed to provide sufficient evidence to demonstrate that her hardships upon separation from the applicant would amount to extreme hardship.

The AAO also concluded in our prior decision that the applicant failed to establish that the qualifying spouse, a native of Sierra Leone, would suffer extreme hardship if she were to relocate to there with him. The applicant did not make any new assertions regarding the possible hardships that the qualifying spouse would suffer upon relocation. In our prior decision, the AAO considered the applicant's statement accompanying the Form I-290B indicating that the applicant's spouse has strong family ties to the United States and does not have any ties outside of the United States or in the United Kingdom. However, we indicated that the record was silent regarding the qualifying spouse's family in the United States, and there is no indication whether she has close relationships with them. While we found the assertions in the Form I-290B relevant and considered them, little weight could be afforded them in the absence of supporting evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. 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)). On motion the applicant provides no new documentation regarding the applicant's family ties to the United States.

The psychological evaluation, however, notes that that the applicant's spouse described having close relationships with her mother and three sisters, who live together in Africa. Without additional evidence to show how relocation would affect the applicant's spouse, the AAO must affirm its prior decision finding that the applicant has not established his spouse would experience extreme hardship in either Sierra Leone or the United Kingdom if she were to join the applicant there.

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 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 a waiver as a matter of discretion.

Furthermore, motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the applicant has not met that burden.

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.

ORDER: The motion will be granted, the previous decision affirmed and the waiver application denied.