

(b)(6)



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

[REDACTED]

Date: **APR 18 2013**

Office: LAWRENCE, MA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the 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, Lawrence, Massachusetts. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the underlying waiver application remains denied.

The record reflects that the applicant is a native and citizen of Cameroon who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. The AAO dismissed the appeal, also finding that there was insufficient evidence in the record to show extreme hardship to the applicant's husband if the applicant's waiver application were denied.

On appeal, counsel submits additional evidence of hardship and contends, among other things, that the applicant's husband would suffer extreme hardship if his wife's waiver application were denied, particularly considering he has a son from a prior relationship for whom he pays child support, the applicant's medical problems, and country conditions in Cameroon.

A motion to reopen must state the new facts to be proved in the reopened proceeding 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, counsel has submitted a brief and additional new documentary evidence to support the applicant's waiver application. The applicant's submission meets the requirements of a motion to reopen and reconsider. Accordingly, the motion is granted.

In addition to the documents specified in the AAO's previous decision, the record also contains, *inter alia*: an updated statement from the applicant's husband, [REDACTED] a statement from [REDACTED] son's biological mother; a letter from [REDACTED] physician; financial documents; and a copy of the U.S. Department of State's Travel Alert to all Americans living and traveling abroad, including in Cameroon, and other background materials.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, the AAO had previously found that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to enter the United States in December 1997 using a fraudulent passport. On motion, counsel does not contest this finding of inadmissibility.

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 Igè*, 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.

After a careful review of the entire record, the AAO finds that the applicant’s husband, [REDACTED], will suffer extreme hardship if the applicant’s waiver application were denied. The AAO finds that if [REDACTED] remains in the United States, he would suffer extreme hardship. On motion, [REDACTED] explains that if he remains in the United States, he would be unable to care for the couple’s two young children, who are currently five and eight years old, because he works the night shift. A letter from his employer corroborates this claim, stating that [REDACTED] works from 3:00 p.m. until 11:30 p.m. and that there are no open shifts available for him to change his schedule. In addition, new evidence submitted on motion shows that [REDACTED] is already experiencing depression and anxiety over the possible separation from his wife. According to [REDACTED], he is having problems focusing at work and his supervisor has recently complained of his poor job performance. A letter from [REDACTED] co-worker corroborates this claim, stating that his attention is not what it used to be, that he seems distracted and disheveled, and that his work production has declined. A letter from his physician states that [REDACTED] has been his patient for twelve years, and that in the last year, he has become increasingly stressed due to the threat of his wife’s deportation, resulting in anxiety, depression, lost sleep, headaches, and decreased appetite. According to his physician, [REDACTED] symptoms would worsen even further if he were separated from his wife. Furthermore, the record contains a Travel Alert for Cameroon and other articles addressing conditions in Cameroon. Although the Travel Alert is no longer in effect, the AAO acknowledges that the U.S. Department of State reports that crime is a serious problem throughout Cameroon. *U.S. Department of State, Country Specific Information, Cameroon*, dated January 3, 2013. Therefore, the AAO acknowledges that if [REDACTED] remained in

the United States, he would reasonably be concerned about his wife's health and safety in Cameroon, particularly considering that the record shows his wife was diagnosed with systemic lupus erythematosus in 2005 which, according to her physician's letter in the record, can be fatal without proper medical treatment. Considering these unique circumstances of this case cumulatively, the AAO finds that the hardship the applicant's husband would experience if he remains in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if the applicant's husband returned to Cameroon, where he was born, to avoid the hardship of separation, he would also experience extreme hardship. New evidence submitted with the motion shows that [REDACTED] has a child from a previous relationship and that he is court ordered to provide child support and health insurance for his son. In addition, [REDACTED] contends he is very close with his son and a letter from the child's mother states that she will not allow her son to relocate to Cameroon to be with his father. The AAO acknowledges that returning to Cameroon would entail leaving his job and all of its benefits, including health insurance, very likely placing [REDACTED] in violation of his court order. In addition, the AAO recognizes [REDACTED] contention that he left Cameroon as a teenager and the record shows that he has been employed as a radiation technician by the same employer since 2007 and has lived in the United States since at least 2001 when he married his first wife. Therefore, [REDACTED] has lived in the United States for most, if not all, of his entire adult life. Considering all of these factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if he returned to Cameroon to be with his wife is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

In that the applicant has established that the bars to his admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, “[B]alance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Id.* at 300 (citations omitted).

In this case, the AAO finds that the applicant does not warrant a favorable exercise of discretion. The record reflects that on March 9, 2004, the applicant was arrested for shoplifting by concealing merchandise of over \$100 in [REDACTED]. The applicant identified herself as [REDACTED] gave her date of birth as January 30, 1978, and stated she was a native and citizen of Nigeria. Although the applicant was not convicted of this offense, the applicant has not acknowledged or explained the reason she used a fraudulent identity. Therefore, counsel’s contention that the applicant has not made continued misrepresentations after her arrival in the United States is incorrect.

The adverse factors in the present case include the applicant’s misrepresentation of a material fact to procure an immigration benefit, the unexplained misrepresentation of her identity during her 2004 arrest, the applicant’s failure to comply with her removal order, and periods of unauthorized presence and employment. The favorable and mitigating factors in the present case include the applicant’s family ties to the United States, including her U.S. citizen husband and two children, and the extreme hardship to the applicant’s family if she were refused admission. The AAO notes, however, that the applicant married her husband on August 18, 2007, after she was ordered removed. Therefore, any hardship suffered by her husband is given less weight. *See Garcia-Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991) (less weight is given to equities acquired after a deportation order has been entered); *Carnalla-Nunoz v. INS*, 627 F.2d 1004 (9th Cir. 1980) (after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998), need not be accorded great weight by the district director in considering discretionary weight); *see also Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992).

The AAO finds that, when taken together, the favorable factors in the present case do not outweigh the significant adverse factors such that a favorable exercise of discretion is warranted. Accordingly, the underlying waiver application must be dismissed.¹

ORDER: The motion will be granted and the underlying waiver application remains denied.

¹ To the extent counsel contends the AAO erred in not adjudicating the appeal of the applicant’s Form I-212 because the applications are inextricably linked, and both forms were listed on the Form I-290B, the AAO clarifies that the record does not indicate that a separate fee was paid to appeal the denial of the Form I-212. Because a separate decision was rendered and there was no separate Form I-290B and associated fee, the AAO did not adjudicate the denial of the Form I-212. There is nothing in the regulations or the instructions for the Form I-290B that would allow for multiple decisions to be appealed using one Form I-290B.