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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[REDACTED]

DATE: **AUG 28 2013**

Office: SEATTLE, WA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Seattle, Washington, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Burkina Faso 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 in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and that the applicant does not merit a favorable exercise of discretion. The field office director denied the application accordingly.

On appeal, counsel contends that the applicant established extreme hardship to her husband, particularly considering his memory loss and inability to work.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED], indicating they were married on February 26, 2008; an affidavit and a letter from [REDACTED]; a letter from [REDACTED] physician and copies of medical records; copies of pay stubs, tax returns, and other financial documents; letters of support; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for Burkina Faso; copies of photographs of the applicant and her husband; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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 applicant concedes that in May 2002, she entered the United States using another person's passport. The record also shows that the applicant applied for asylum in June 2002 under the name [REDACTED] claiming she was from the Central Republic of Africa and that her date of

birth was November 22, 1982. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's husband, [REDACTED] states he is fifty-one years old and was born and raised in Seattle, Washington. According to [REDACTED] he suffered a traumatic brain injury a few years ago and suffers from memory loss as a result. He states he has been unable to work since November 2007 and cannot recall events from the past. He contends he fears being separated from his wife because his daily life would be impossible without her. [REDACTED] states his wife is the primary financial provider since he cannot work and she is his caregiver. Furthermore, [REDACTED] states he cannot relocate to Burkina Faso to be with his wife because it is one of the poorest countries in the world, he does not know anyone there, and he does not speak any language other than English. He states he is Christian and he fears being harmed by his wife's Muslim family who thinks their relationship is "abominable."

After a careful review of the entire record, the AAO finds that if the applicant's husband decides to remain in the United States without his wife, he would suffer extreme hardship. The record corroborates his claim regarding his memory loss and his need for his wife's assistance. According to letters from Mr. [REDACTED] physician, [REDACTED] suffers from severe and permanent memory loss as a result of a head injury he sustained three years ago. The physician states that [REDACTED] has extreme difficulty forming new memories and frequently requires someone to accompany him and coordinate his activities of daily living. In addition, the physician states that [REDACTED] "is not fit to continue employment of any type at this point, due to severe memory loss." The physician requests that [REDACTED]'s wife be permitted to supervise her husband. Letters of support in the record also corroborate [REDACTED] contention that he needs his wife's assistance. According to the letters of support, [REDACTED] is totally different now compared to how he was prior to his head injury, he has no other family members to take care of him, and it would be difficult for [REDACTED] to have any sense of a normal life without his wife. [REDACTED] reportedly needs "serious help," and his wife helps him with grooming, reminds him to take medication, and cleans and does laundry for him. Considering the 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 and is separated from his wife is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if the applicant's husband relocated to Burkina Faso to be with his wife, he would experience extreme hardship. As stated above, [REDACTED] has been diagnosed with severe memory loss to the extent that he requires his wife's assistance with daily living and is unable to hold any type of employment. The AAO acknowledges [REDACTED]'s contention that he only speaks English and recognizes that if he relocated to Burkina Faso, learning a new language would pose a considerable hardship given his difficulty with forming new memories. In addition, the AAO recognizes [REDACTED]'s contention that he has lived in the United States his entire life and that he has no family ties in Burkina Faso. Moreover, the applicant has submitted documentation addressing country conditions in Burkina Faso and the AAO takes administrative notice that the U.S. Department of State describes the country as one of the world's least-developed countries. *U.S. Department of State, Country Specific Information, Burkina Faso*, dated April 11, 2013. [REDACTED] would need to adjust to living in Burkina Faso, a difficult situation made even more complicated given his severe memory loss. Considering

all of these factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if he relocated to Burkina Faso 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 her 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. As the field office director found, the applicant has used three separate identities to apply for immigration benefits. Specifically, as counsel concedes, the applicant entered the United States in May 2002 with a false passport. The record also shows that the applicant filed her first asylum application in June 2002 under the false name [REDACTED] claiming she entered the United States using her sister's identity, and claiming she was from the Central Republic of Africa and that her date of birth was November 22, 1982. An employment authorization card in the record contains this same false information regarding her name, date of birth, and country of birth. A Washington state identification card issued in February 2007 also shows her false name and false date of birth, indicating that she continued to use this identity for a number of years. The record contains a second asylum application dated October 25, 2006, filed under the applicant's purported true name of [REDACTED] claiming she is from Burkina Faso, with a date of birth of November 22, 1975. At the applicant's asylum hearing, she stated that the second asylum application is an amended asylum application because the asylum application filed in June 2002 "was incorrect and it had my incorrect name." According to the applicant, her English was not good at the time and someone else completed the asylum application and told her to just sign it. Inexplicably at the time of the asylum interview, after conceding her first

asylum application was filed using an “incorrect” name, the applicant signed her application using her incorrect name of [REDACTED].¹ Despite the field office director’s explicit statement that the applicant does not warrant a favorable exercise of discretion based on her lack of explanation for her inconsistencies in using different identities, neither counsel nor the applicant address her use of several identities. Rather, counsel has simply submitted a copy of the applicant’s birth certificate which indicates her name is [REDACTED] and that her date of birth is November 22, 1975, without explaining why she signed her 2007 asylum application [REDACTED]. The applicant has not adequately addressed the inconsistencies regarding her different identities, different dates of birth, different countries of birth, or state-issued identification card and employment authorization card under an “incorrect” name.

Moreover, as the field office director also noted, the record does not contain any evidence that the applicant was ever admitted into the United States, either using an assumed identity or her true identity. As such, the applicant has not met her burden of proving she was inspected or admitted into the United States (or that she is the beneficiary of a visa petition or labor certificate filed by April 30, 2001), a requirement for an applicant to be eligible to adjust status under either section 245(a) or 245(i) of the Act. Again, neither counsel nor the applicant has addressed this issue regarding the lack of evidence to show she was ever admitted into the United States. The applicant’s failure to address these significant issues regarding her identity and her entry into the United States weigh heavily against her.

The adverse factors in the present case include the applicant’s misrepresentations of her identity in order to procure an immigration benefit, her continued use of her false identity and her failure to provide evidence of her entry into the United States. 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 the extreme hardship to the applicant’s husband if she were refused admission. The AAO finds that, when taken together, the favorable factors in the present case do not outweigh the adverse factors such that a favorable exercise of discretion is warranted.

In application proceedings, it is the applicant’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

¹ The AAO notes that the signature on the application when first submitted was [REDACTED] and at the interview when instructed to write her name in her native language, she also wrote “[REDACTED],” but the signature taken at the interview is clearly [REDACTED].”