



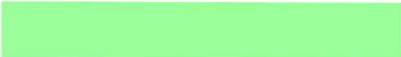
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DATE: **FEB 27 2013**

Office: NAIROBI, KENYA

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 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 request 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, Nairobi, Kenya, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Uganda 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 having attempted to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He 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 Director concluded that the applicant had failed to demonstrate extreme hardship to his qualifying spouse and denied the application accordingly. *See Decision of Field Office Director*, dated February 16, 2012.

On appeal, counsel for the applicant asserts that the Field Office Director erred in finding the applicant inadmissible. Counsel claims that the applicant did not willfully provide false information on his visa applications but instead failed to review paperwork a travel agent had prepared for him and did not realize the paperwork contained incorrect or fraudulent information. Counsel also contends that the Field Office Director failed to consider in the aggregate the hardship the qualifying spouse has suffered in the applicant's absence and would continue to suffer if the waiver application were denied. Counsel alleges that the qualifying spouse is obese and at risk for health problems, and that she has a history of family trauma and abuse. Counsel also states that the qualifying spouse lives below the poverty line and that she is unable to pay her student loans or her medical bills. Additionally, counsel contends that the qualifying spouse suffers from depression and that she needs the emotional support of the applicant. He asserts that moving to Uganda or remaining in the United States without the applicant would cause extreme hardship for her. *Counsel's Brief*.

The record includes, but is not limited to: statements from the applicant and the qualifying spouse; educational records; medical records; financial records; letters from the qualifying spouse's family members; letters from the applicant's friends; country conditions information; death certificates for family members of the qualifying spouse; and a psychological evaluation regarding the qualifying spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant contests the finding of inadmissibility on appeal. Pursuant to section 291 of the Act, he bears the burden of demonstrating by a preponderance of the evidence that he is not inadmissible. *See also Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978). Where the evidence for and against admissibility "is of equal probative weight," the applicant cannot meet his burden of proof. *Matter of Rivero-Diaz*, 12 I&N Dec. 475, 476 (BIA 1967) (citing *Matter of M--*, 3 I&N Dec. 777, 781 (BIA 1949)).

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.

In the present case, the record reflects that on December 3, 2003, the applicant appeared before a consular office and filed an application for a nonimmigrant visa on which he provided a false date of birth and claimed to have financial assets that were not corroborated by the documents he presented. The application was denied. On September 23, 2004, the applicant again appeared before a consular officer to request a nonimmigrant visa. He again provided a false date of birth and he submitted forged bank documents to corroborate his claims regarding his assets. The application was denied and he was informed that he was inadmissible for having made a material misrepresentation in an attempt to obtain a visa. On or about December 5, 2009, the applicant filed a Form DS-156, Nonimmigrant Visa Application, on which he claimed that he was engaged to a Ugandan citizen and therefore had sufficient ties to Uganda to demonstrate nonimmigrant intent. However, the applicant had begun a relationship with the qualifying spouse in 2008 and began to discuss marriage with her in October 2009. On October 4, 2011, the applicant submitted a Form DS-230, Application for Immigrant Visa and Alien Registration, on which he indicated that he had never sought to procure a visa or immigration benefit through fraud or misrepresentation.

The applicant contends that his misrepresentations were not willful. He states that he hired a travel agent to prepare his 2003 visa application and that he failed to review the application before submitting it, so he did not realize that the travel agent had listed an incorrect birth date. He also states that he hired the same travel agent to prepare his 2004 visa application and that, once again, he did not review the application and accompanying documentation before submitting it. He therefore claims that he was surprised when his birth date was incorrect on that application and when the accompanying bank documents were revealed to be fraudulent. The applicant also asserts that he did not willfully provide false information about his Ugandan fiancée on the Form DS-156 he submitted in 2009, but rather that he forgot to notify his attorney that he was no longer engaged to his Ugandan fiancée and had decided to marry the qualifying spouse instead. Finally, the applicant claims that his failure to disclose his prior misrepresentations on his Form DS-230 was not intentional, but that he misunderstood the question to apply only to immigrant visas rather than nonimmigrant visas.

The AAO finds that the applicant has failed to demonstrate that he is not inadmissible. First, his claim that he was unaware of the false birth date and financial information in his visa applications is not supported by the evidence. Although he states on his form I-601 that he was surprised to find that the travel agent had provided false information with his 2004 visa application and realized that it was a mistake not to review the application in advance, he had hired the same travel agent in 2003 and had presented false information with that application as

well. Additionally, in his statement of March 5, 2012, the applicant admits that he knew by November 26, 2003 that his passport contained an incorrect date of birth but that he decided to submit it with his visa applications despite the error. His claim that he was unaware that his applications contained false information therefore is not credible.

Additionally, although the applicant claims that he forgot to inform his attorney that he was no longer engaged to a Ugandan citizen, evidence in the record indicates that he was aware that insufficient ties to Uganda would result in a denial of his nonimmigrant visa application, and that information about his Ugandan fiancée was being provided with his application to establish such ties. Therefore, the evidence suggests that the applicant willfully provided false information about his relationship status in his nonimmigrant visa application.

The applicant is eligible to apply for a waiver under section 212(i) of the Act as the spouse of a U.S. citizen.

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.

Pursuant to section 212(i) of the Act, 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. Hardship to the applicant herself can only be considered insofar as it causes extreme hardship to her qualifying spouse. 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 of Immigration Appeals (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 U.S. 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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 qualifying spouse indicates that she had a traumatic childhood. She states that her mother neglected her so she was raised by her elder siblings and her grandmother. Between the ages of

nine and 11, the qualifying spouse was sexually abused by four male family members. When the qualifying spouse was 12 years old, her mother died due to complications of AIDS and her grandmother died a few weeks later. The qualifying spouse then lived with a physically abusive aunt for several years. Her elder sister, who was a maternal figure in her life, also died suddenly in 2009. The qualifying spouse asserts that as a result of the trauma and loss she has experienced, she suffers from depression and obesity. She states that the applicant has provided stability and emotional support in her life and that his inability to obtain a visa has had a negative effect on her mental and physical health.

The qualifying spouse also asserts that she would not be able to relocate to Uganda. She notes that she was born and raised in the United States and that she is not familiar with the Ugandan culture or language. She also fears that she would be unable to obtain sufficient medical care in Uganda, that she would experience discrimination as a woman and as a foreigner, and that she would be unable to continue her education there. Additionally, the qualifying spouse is close to her siblings, nieces, and nephews in the United States and does not want to be separated from them. Finally, the qualifying spouse has a steady job in the United States through which she will soon receive healthcare benefits and she believes she would struggle financially in Uganda.

The AAO finds that the qualifying spouse would suffer extreme hardship if she were to relocate to Uganda. The evidence indicates that the qualifying spouse has a history of significant loss and trauma and that she and her remaining family members rely on each other for support. Separation from them would be very difficult for her. The qualifying spouse has also lived her entire life in the United States and would experience increased stress if she were forced to adjust to the unfamiliar language and culture of Uganda. Furthermore, the qualifying spouse lives close to the poverty line in the United States but maintains a steady part-time job with health insurance, which she would lose if she were to relocate. In the aggregate, these factors would create extreme hardship for the qualifying spouse.

However, the applicant has failed to demonstrate that his qualifying spouse would suffer extreme hardship upon separation from the applicant. The qualifying spouse claims that she relies on the applicant for emotional support and that he brings a sense of security and stability to her life. The psychological evaluation in the record also notes that the qualifying spouse reports that she and the applicant "have developed a very strong emotional bond" and that she could suffer "[m]ental health injury and financial hardship" if they are separated for a long period of time. See *Mental Health Evaluation*, [REDACTED], dated December 9, 2011. However, the applicant has never lived in the United States with the qualifying spouse and has never provided her with financial support. The record indicates that the applicant and the qualifying spouse had never met in person prior to their decision to get married and have only spent approximately one month together, when the qualifying spouse traveled to Uganda for their wedding. Therefore, the evidence is insufficient to demonstrate that the qualifying spouse depends on the applicant for emotional and financial support to such an extent that continued separation from him would cause her extreme hardship. Although the qualifying spouse claims that separation from the applicant has caused her emotional difficulty, there is no evidence in the

record that hardship to her would rise above that which is normally expected from the removal or inadmissibility of a close family member. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of O-J-O-*, 21 I&N Dec. at 383.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. 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 in 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). 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.

In proceedings for an 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.