



**U.S. Citizenship
and Immigration
Services**

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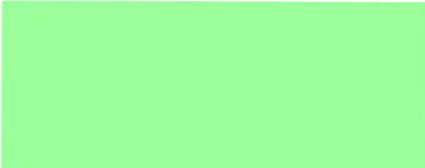
DATE: **FEB 27 2013**

Office: ATLANTA, GA

FILE: 

IN RE: 

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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Atlanta, Georgia, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of Cameroon 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 procured 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. The applicant 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 establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision*, dated September 23, 2011.¹

On appeal, counsel asserts that the applicant's spouse, the qualifying relative, has additional hardship resulting from her miscarriage and second pregnancy and also asserts that their "new born child" would suffer extreme hardship if they relocate to Cameroon. The applicant through his counsel submits additional evidence for consideration. *See Form I-290B, Notice of Appeal or Motion*, dated October 21, 2011.

The evidence of record includes, but is not limited to: briefs from counsel, statements from the applicant and his spouse, psychological evaluations and medical documentation for the applicant's spouse, financial documents, family photographs, and copies of relationship and identification documents. The entire record was reviewed and all relevant evidence considered in reaching 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.

¹ The director erroneously found the applicant inadmissible under section 212(a)(2)(A)(i) of the Act and concluded the applicant failed to show his spouse would suffer extreme hardship if the waiver were denied, under section 212(h) of the Act. However, the director's decision also indicated that the applicant was inadmissible for willful misrepresentation of a material fact. In his decision denying the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, the director indicated that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. Therefore, the AAO finds the director's error harmless.

The record indicates that the applicant entered the United States on November 1, 2006 with a nonimmigrant visa under an assumed name, [REDACTED] and a false birthdate. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. Counsel does not contest the applicant's inadmissibility.

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.

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).

The record contains references to hardship the applicant and his child would experience if the waiver application were denied. It is noted that Congress did not include hardship to aliens and their children as factors to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardships to the applicant and his child will not be separately considered, except as they may affect the applicant's spouse, and as a matter of discretion.

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, 631-32 (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, "[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., *In re 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 AAO now turns to the question of whether the applicant in the present case has established that his qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel states that the applicant's spouse will not be able to obtain adequate psychological treatment in Cameroon if she relocates. The record indicates that the applicant's spouse has recurrent major depression and panic disorder. Counsel also states that the applicant

and his spouse have significant financial liabilities, which they will not be able to pay if they relocate.

In accordance with custom in Cameroon, the applicant claims that he was chosen to marry his grandfather's seven widows. He states that their regional customs also involve "devil worship, voodoo, and polygamy." Although raised Christian, he would be "forced to worship the devil" and marry his grandfather's widows if he returns to Cameroon. The applicant states that this would cause extreme hardship to his spouse. The applicant also states that his mother died after being assaulted by a group of villagers because she helped him flee from Cameroon; he will face death if he returns and also fears for his wife's safety there. The applicant also states that his spouse would be unlikely to find adequate employment in Cameroon.

The applicant's spouse states that finding employment in Cameroon comparable to her position in the United States is "slim to none" because of her inability to speak French, differences in employment opportunities, and visa requirements. She states that not being able to financially support her family would be hardship for her. The applicant's spouse works full-time and earns \$10 an hour. The applicant earns between \$7.25 and \$13.50 hourly. The record indicates that the applicant and his spouse have significant credit-card debt and owe over \$12,000 for their two cars.

The record indicates that the applicant's spouse traveled to Cameroon in June 2010 without the applicant to visit his family. She believes that the language barrier would hinder her educational opportunities and her ability to make friends in Cameroon, and she would feel isolated. She has no family there other than the applicant and his family. She also raises concerns about the availability of adequate healthcare there, given her fears of certain medical conditions she and their child may inherit from her family. The applicant's spouse lists her family and community ties and cultural barriers as other hardships if she relocates to Cameroon.

With respect to emotional hardship, the applicant's spouse states that since the applicant's application was denied, she has "suffered much psychological strain"; she cannot sleep or eat, and her job performance is being affected. According to Dr. [REDACTED], the applicant's spouse "does not handle stress well." Dr. [REDACTED] suggests that the applicant's spouse's inability to handle stress may be because she does not have any source of support other than the applicant; her family lives in another state. Dr. [REDACTED] states that the applicant's spouse admits to suicidal thoughts and has shown "tendencies toward self-mutilation" by pulling out her hair. Dr. [REDACTED] concludes that "continued feelings of desperation" may put the applicant's spouse at risk for a suicide attempt. Dr. [REDACTED] recommends psychological counseling and psychiatric medications to treat her symptoms.

Having reviewed the preceding evidence, the AAO finds that the applicant's spouse would experience extreme hardship if the waiver application is denied and she remains in the United States. In reaching this conclusion, we note the applicant's spouse's mental condition and that she has no family members other than the applicant who can provide emotional support. Her psychologist indicates that her symptoms could escalate and she may be at risk for suicide.

Furthermore, the record establishes that the applicant provides about half the family's income and without the applicant's income, his spouse would experience financial hardship. Therefore, the AAO concludes, considering the evidence in the aggregate, the applicant's spouse would experience extreme hardship if she separates from the applicant.

The AAO also finds the record to establish that the applicant's spouse would experience extreme hardship if she were to relocate to Cameroon. We note that the applicant's spouse does not speak the language and does not have any family in Cameroon other than the applicant. She does not handle stress well and feeling isolated would negatively affect her mental condition. Her inability to speak the language would further create difficulty for her to receive psychological counseling, as recommended by her doctor. The applicant's spouse's inability to obtain employment would further create financial and emotional hardship for her, given the family's significant debt in the United States. Moreover, the applicant's and his spouse's safety concerns are corroborated by the U.S. Department of State's country-specific report for Cameroon, last updated on January 3, 2013, which indicates that crime "is a serious problem throughout Cameroon" and "[c]rimes against property, such as carjacking and burglaries, have often been accompanied by violent acts that resulted in fatalities." See http://travel.state.gov/travel/cis_pa_tw/cis/cis_1081.html. The report states that all foreigners are potential targets for theft and possible violence associated with it. The AAO concludes that considering the evidence in the aggregate, the applicant's spouse would experience extreme hardship, should she relocate.

When the specific hardship factors noted above and the hardships routinely created by the separation of families are considered in the aggregate, the AAO finds that the applicant has established that his spouse would face extreme hardship if the applicant's waiver request is denied. The applicant has established statutory eligibility for a waiver of his inadmissibility under section 212(a)(6)(C) of the Act.

In that the applicant has established that the bar 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, "balance 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).

The adverse factor in the present case is the applicant's fraud or material misrepresentation to obtain admission to the United States, for which he now seeks a waiver. The mitigating factors include the applicant's U.S. citizen spouse, the extreme hardship to his spouse if the waiver application is denied, the applicant's stable employment history, and the absence of a criminal record for the applicant.

The AAO finds that the immigration violation committed by the applicant is serious in nature and cannot be condoned. Nevertheless, when taken together, the mitigating factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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. *See* section 291 of the Act, 8 U.S.C. § 1361. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.