



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: JAN 02 2013

Office: ACCRA

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, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 our 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-190B, 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 a 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, Accra, Ghana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States through fraud or willful misrepresentation of a material fact. The applicant is the fiancé of a U.S. citizen. The applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen fiancée.

The field office director concluded that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the applicant asserts that the director erred in finding that the applicant has not established extreme hardship to his qualifying relative. The applicant contends that the evidence outlining financial difficulties demonstrates extreme hardship to his U.S. citizen fiancée.

The record includes, but is not limited to: a statement from the applicant; a child support order; a medical letter concerning the applicant's fiancée; statements from the applicant's fiancée; pay stubs and income tax returns; and a self-made income and monthly expenses report concerning the applicant's fiancée.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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.

The record shows that in September 2008 the applicant applied for a diversity immigrant visa by falsely claiming to be the spouse of one [REDACTED], a diversity visa selectee. The applicant concedes in his Form I-601 that he misrepresented his marriage status to a consular officer in order to procure an immigrant visa. Based upon this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not dispute this finding on appeal.

Section 212(i) of the Act provides, in pertinent part, that:

- (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 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 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 lawful permanent resident spouse or parent of the applicant. Hardship to the applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative, which, for purposes of this appeal, is the applicant's fiancée. 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-Moralez*, 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 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 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 the 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 is 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 issue of whether the applicant has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

The asserted hardship factors to the qualifying relative are the psychological and financial hardships the applicant's fiancée would experience in the event of separation. In her undated statements, the applicant's fiancée states that she is emotionally and psychologically attached to the applicant. She further states that she has been experiencing sleep disorders since finding out about the applicant's inadmissibility. The applicant's fiancée also asserts that she is experiencing stress from the fact that she is a single mother raising two children with only one income. The applicant's fiancée avers that all of these factors have affected her functionality at work. In support of her assertions, the applicant submitted a letter by Dr. [REDACTED], M.D., a pulmonologist with offices in the [REDACTED] New York, who states that the applicant's fiancée has been diagnosed with depression. Dr. [REDACTED] does not indicate in his statement the tests he performed to conclude that the applicant's fiancée is experiencing depression as a result of his fiancé's immigration situation. That is, the letter does not indicate the methodology he used to reach his findings. The conclusions rendered by Dr. [REDACTED] do not reflect the insight derived from any extensive testing or observation of the applicant. The AAO finds that the medical letter submitted as evidence lacks detail, as it does not reference the basis for the diagnosis, the severity of the applicant's fiancée's conditions, or the possible impact of treatment or therapy subsequently received or, at least, available. Given these deficiencies, the AAO is unable to determine the weight to give the doctor's conclusions, and to determine the severity of the applicant's fiancée's psychological difficulties for purposes of the extreme hardship analysis.

The applicant's fiancée states that the applicant is a loving person who is interested in starting a family with her. She further states that the applicant provides the emotional support she needs as a single mother struggling with two jobs and two children. In his statement on appeal, dated November 7, 2011, the applicant states that he loves his fiancée and that they rely on each other for support. Here, the AAO acknowledges that the applicant's fiancée may experience some emotional difficulties in being separated from the applicant. However, while it is understood that the

separation of qualifying relatives often results in emotional challenges, the applicant has not distinguished his fiancée's emotional hardship upon separation from that which is typically faced by the qualifying relatives of those deemed inadmissible. The AAO also notes that the applicant's fiancée may suffer some hardship in having to care for her two children alone; however, the evidence does not establish that her hardship would be extreme. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

With regards to financial hardship, the applicant states that his fiancée currently works "two jobs in order to be able to provide for herself and her two children." The applicant further states on appeal, and the record evidence corroborates, that his fiancée receives \$50 per week in child support but that she does not receive any other financial assistance. The applicant indicates that his fiancée "struggles financially" and that she needs him in the United States to contribute monetarily and alleviate her financial hardships. The applicant submitted financial documentation on appeal, including a statement of monthly income and expenses for the applicant's fiancée, to corroborate his assertions regarding financial hardship. Upon review, the AAO finds these documents insufficient to establish extreme hardship. For instance, the applicant asserts in one part of the income and expense statement that his fiancée earns \$2,200 bi-weekly. Yet, in the same report he indicates that his fiancée's total *monthly* income is \$2,200. Also, though the applicant indicates that monthly expenses for utilities and groceries total \$576 a month, the record does not include any utility bills, bank records, or other monthly financial statements corroborating his claim regarding his fiancée's monthly expenses and the asserted inadequacy of her income. Additionally, though there is evidence in the record indicating that the applicant's fiancée receives \$50 monthly in child support, the income and expenses report submitted on appeal indicates that the applicant's fiancée receives \$400 a month in child support. Given these inconsistencies and deficiencies, the AAO is unable to assess the nature and extent of financial hardship the applicant's fiancée will face without additional details and supporting documentary evidence of the family's expenses and income.

Consequently, while the AAO acknowledges that the applicant's fiancée would face emotional difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, psychological, or other impacts of separation on the applicant's fiancée are cumulatively above the hardships commonly experienced with inadmissibility, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant remains in Cameroon without the fiancée.

In regard to joining the applicant to live in Cameroon, the asserted hardship factors are the educational hardships to the applicant's fiancée, and the asserted lack of access to medical care the applicant's children will experience in Cameroon. With regards to educational hardships, the applicant asserts in his statement on appeal that his fiancée intends to pursue a degree in Nursing in the United States. He further asserts that his fiancée would be unable to pursue such a degree in Cameroon as she will be unable to obtain a financial student loan in that country. Here, the record does not support the applicant's assertions that his fiancée would be unable to pursue a nursing degree in Cameroon. There is no evidence in the record indicating that the applicant's fiancée would be unable to enroll in a college or university because of her citizenship or immigration status. Also,

there is no evidence demonstrating the unavailability of nursing degrees in Cameroon, or that universities in that country do not provide financial assistance to noncitizens. Accordingly, the current documentation submitted is insufficient to establish that the applicant's fiancée would be unable to study nursing in Cameroon. The AAO notes that the applicant has asserted on appeal that his fiancée's children would encounter educational difficulties should they relocate to Cameroon with their mother. However, the record does not contain any evidence indicating that the educational system in Cameroon is deficient, or that his fiancée's children will be unable to benefit from that country's education system. Additionally, it is noted that the applicant's fiancée's children are not qualifying relatives for purposes of a section 212(i) waiver of inadmissibility. As such, hardship to the children will not be separately considered, except as it may affect the applicant's fiancée. In this case, the applicant has not shown that hardship to his fiancée's sons will elevate his fiancée's challenges to the level of extreme hardship.

Lastly, the AAO notes that the current documentation submitted is insufficient to establish that the applicant's fiancée will experience inadequate medical care in Cameroon. The record fails to establish that she would not receive appropriate medical care in that country, should that become necessary. Moreover, the record does not establish that the applicant's fiancée or her children have medical conditions requiring regular and ongoing medical treatment. Additionally, the record does not include documentation from country conditions sources to support the applicant's claims made pertaining problems with the standards of medical care in Cameroon.

The documentation in the record fails to establish the existence of extreme hardship to the applicant's fiancée caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* 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.