



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: JAN 02 2013

Office: PHILADELPHIA

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:

[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 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,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Morocco 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 procured admission to the United States through fraud or willful misrepresentation of a material fact. The applicant is the husband 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 remain in the United States with his U.S. citizen spouse.

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, counsel for the applicant asserts that the applicant did not willfully misrepresent a material fact on his nonimmigrant visa application, Form DS-160. Counsel avers that the applicant, who in turn asserts that he does not read nor write Arabic or English, relied upon the services of a "cybershop/multiservice office" to complete the visa application form and that the store employee mistakenly wrote the incorrect information leading to the finding of inadmissibility. Counsel also asserts that, were the AAO to find the applicant inadmissible, the director erred in finding that the applicant has not established extreme hardship to his qualifying relative.

The record includes, but is not limited to: counsel's brief; the applicant's statement; the applicant's wife's statement; a polygraph report; a sworn statement from the "cybershop" employee who completed the applicant's Form DS-160; income tax returns; a psychological assessment; country conditions documentation; birth certificates; and a school certificate.

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 May 2010, the applicant applied for a nonimmigrant visa by filing Form DS-160 at the U.S. Consulate in Casablanca, Morocco. The applicant's Form DS-160 reflects that the applicant was married to one [REDACTED] when, in fact, a divorce certificate in the record shows that this marriage had ended in divorce prior to the time of filing Form DS-160. The consular officer's notes further indicate that the applicant stated during his visa interview that he was married.

In considering whether the misrepresentation on the applicant's nonimmigrant visa application bars his admission to the United States pursuant to section 212(a)(6)(C)(i) of the Act, the AAO will first determine whether it is a material misrepresentation for immigration purposes. The Supreme Court in *Kungys v. United States*, 485 U.S. 759 (1988), found that the test of whether concealments or misrepresentations were "material" was whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, United States Citizenship and Immigration Services (USCIS) decisions. In addition, in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961), the Board of Immigration Appeals (Board) found that a misrepresentation made in connection with an application for visa or other documents is material if either: (a) the alien is excludable on the true facts, or (b) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded. *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (AG 1961).

Here, the applicant's misrepresentation of his marital status on his nonimmigrant visa application constitutes a material misrepresentation under the Act. By stating that he was married in both the Form DS-160 and to the consular officer interviewing him, the applicant cut off a line of inquiry that was relevant to his request for a nonimmigrant visa. Specifically, the applicant cut off a line of inquiry which might have resulted in a denial of his May 2010 nonimmigrant visa application under section 214(b) of the Act, 8 U.S.C. § 1184(b). The record reflects that the May 2010 visa application was the applicant's seventh attempt to gain admission to the United States as a nonimmigrant, and that the previous six applications were all denied because the applicant failed to demonstrate nonimmigrant intent to the consular office. Further, information in the record from the Department of State reflects that the consular officer who interviewed the applicant noted his marriage as one of the reasons the applicant demonstrated nonimmigrant intent to the consular officer's satisfaction. Accordingly, the AAO finds that the applicant misrepresented a material fact to an immigration officer.

The AAO next addresses whether the applicant's misrepresentation was "willful." The requirement of willfulness under section 212(a)(6)(C) of the Act is satisfied by a finding that an alien's misrepresentation was deliberate and voluntary. That is, willfulness is established if the alien had knowledge of the falsity of his statement when made. *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979). Proof of intent to deceive is not necessary, and knowledge of the falsity of the misrepresentation is sufficient. *See Forbes v. INS*, 48 F.3d 439 (9th Cir. 1995).

Counsel for the applicant contends that the misrepresentation was unintentional and that the applicant "did not knowingly give false information to the person who completed the forms nor to the translator during the visa interview." Further, counsel asserts that the applicant contacted a "cybershop/multiservice office" to help him fill out the required immigration forms and that the employee who completed the applicant's Form DS-160 erroneously stated that the applicant was married. Counsel states that the applicant visited the "cybershop/multiservice office" the day of his visa interview to orally answer the form's questions and sign the visa application. Counsel avers that the applicant signed the visa application without verifying the information contained therein because he only has a second grade education and is unable to read or write in English and Arabic. In support of these assertions, the record includes a sworn statement from the alleged employee, in which he indicates that he incorrectly completed the visa application regarding the applicant's

marital status. Further, the record includes a copy of the applicant's school record indicating he pursued elementary school studies from 1979 to 1983 and that his highest grade level of schooling is the second grade.

Upon review, the AAO finds that the applicant's misrepresentation of his marital status on his nonimmigrant visa application constitutes a willful misrepresentation under the Act. It is noted that the May 2010 visa application was the applicant's seventh nonimmigrant visa application, which suggests that the applicant was already aware of the questions contained in the form and that he had sufficient notice of the requirement to disclose marital status in the same. The visa application also reveals that the spouse's address was the same as the applicant's, and that the application also referenced the spouse's date of birth as well as other biographical information. Further, the consular officer's notes reveal that the applicant indicated during his visa interview that he was married. That is, the applicant had an opportunity to state that he had been divorced since April 14, 2010; yet, the record reflects that he misrepresented his marital status during the visa interview as well. Even were the AAO to credit the cybershop employee's affidavit, the applicant has not demonstrated that the misrepresentation made to the immigration officer during the nonimmigrant visa interview was unintentional.

The applicant's assertion on appeal to the effect that he told the consular officer he was not married but had been married previously is given limited weight. Firstly, the applicant's assertion is referenced in an unsworn statement. Secondly, his assertion contradicts the evidence contained in his visa application and the consular officer's notes. Thirdly, this was the applicant's seventh interview for a nonimmigrant visa; and the applicant has not asserted nor shown that he was unaware of the types of questions consular officers routinely ask during such interviews. Rather, the only conclusion derived from this fact is that the applicant was, or should have been, familiar with the type of information he was required to disclose at the time of completing and filing the form. Moreover, the record reveals that the applicant was denied nonimmigrant visas on at least three occasions because he could not demonstrate nonimmigrant intent to the consular officer's satisfaction. The record suggests therefore that the applicant was aware he had to demonstrate significant ties to his home country of Morocco in order to obtain a nonimmigrant visa to the United States. By indicating that he was married in his visa application, the applicant helped establish he had significant ties in his home country, and that he intended to return there at the expiration of his authorized period of stay in the United States. Based on the aforementioned, the AAO finds that the misrepresentation was voluntary, and that the applicant misrepresented a material fact to procure a nonimmigrant visa. Accordingly, the applicant obtained an immigration benefit through the willful misrepresentation of a material fact and is barred from admission to the United States under section 212(a)(6)(C)(i) of the Act.

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 lawfully 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. 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). Here, the record reflects that the applicant is the spouse of a U.S. citizen who has an approved Form I-130, Petition for Alien Relative, which was filed on the applicant's behalf. The applicant's U.S. citizen wife therefore meets the definition of a qualifying relative.

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 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, emotional, and financial hardships the applicant's wife would experience in the event of separation. In her statement dated October 17, 2011, the applicant's wife states she loves the applicant and that they are a happy family. She also indicates that the applicant's removal to Morocco would devastate her, as she "thought her marriage to the [applicant] would allow him to stay in the United States." She further asserts that the applicant makes her "feel happy and that [he] provides [her] emotional support." The AAO acknowledges that the applicant's wife may experience some emotional difficulties in being separated from the applicant. There is evidence in the record indicating that the applicant provides support to his wife by caring for her daughter from a prior relationship while she works. However, while it is understood that the separation of qualifying relatives often results in emotional challenges, the applicant has not distinguished his wife'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 wife may suffer some hardship in having to care for her daughter 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 psychological hardship, counsel asserts that the record evidence demonstrates extreme hardship in the event of separation. Counsel states on appeal that the applicant's wife is a "particularly vulnerable individual who has suffered many tragedies in her life." The record indicates that when the applicant's wife was six years of age, her mother was murdered by a serial killer in Philadelphia. The record also indicates that the applicant's wife was raised by her paternal grandmother, who helped her deal with tragic childhood events and who encouraged her to study and lead a productive life. Counsel points to a psychological assessment of the applicant's wife as evidence that she is depressed and would experience extreme hardship as a result of separation from

the applicant. However, the evidence in the record is inconsistent with counsel's assertions. In a psychological assessment of the applicant's wife, Dr. [REDACTED] states in page eight of the report that the applicant's wife "endorsed some behavioral elements related to depression, but not to a degree to suggest she has this diagnosis." Dr. [REDACTED] further notes in his conclusions that the applicant's wife "presented herself favorably reporting low levels of psychological distress." Though Dr. [REDACTED] also indicates that the applicant's wife has the potential to become depressed, he concludes she is not currently in a state of depression. Dr. [REDACTED] notes that the applicant's wife experienced a severe childhood trauma and several years of struggle. Yet, despite these difficulties, Dr. [REDACTED] concludes that the applicant's wife managed to secure a career, avoid substance abuse and avoid serious mental illness or impairment. The psychological report reflects that the applicant's wife endured a traumatic event and was able to overcome it with the support of her grandmother. Contrary to counsel's assertions, the psychological assessment does not demonstrate that the applicant's wife is currently experiencing any psychological illnesses, or that she has been diagnosed with depression as a result of the applicant's immigration situation and/or the prospect of separation from the applicant. The AAO therefore finds the psychological assessment insufficient to demonstrate psychological hardship to the applicant's qualifying relative. Furthermore, the record does not include additional documentary evidence from which to conclude that the applicant's wife is experiencing other psychological hardships or difficulties that, when considered in the aggregate, may amount to a finding of extreme hardship.

With regards to financial hardship, counsel asserts that the applicant's wife would lose the financial support of the applicant in the event of separation. Counsel further asserts that the applicant's wife will be unable to maintain her standard of living and provide for her daughter and herself if the applicant is forced to return to Morocco. Here, though it is asserted on appeal that the applicant's wife and her daughter would suffer financial difficulties upon his removal from the United States, the applicant has failed to submit documents evidencing how his removal would affect his family's finances. That is, the record does not include any tax returns, pay stubs, utility bills or other documentary evidence demonstrating that the applicant's wife will be unable to maintain her standard of living without the financial support of the applicant. In fact, there is no evidence demonstrating that the applicant is currently employed or that he contributes financially to the household. Rather, the record indicates that the applicant helps with the daily care of the applicant's wife's three-year-old daughter. However, there is no evidence in the record indicating that she will be unable to afford daycare in the event of separation from the applicant nor is there evidence indicating that the applicant's wife's earnings are insufficient to maintain her household.

Based on the foregoing, the AAO finds that when considering the asserted emotional, psychological, and financial hardships collectively, the applicant has not fully demonstrated that the hardship her U.S. citizen spouse will experience in the scenario of separation is more than the common result of removal or inadmissibility.

In regard to joining the applicant to live in Morocco, counsel asserts that it would be "extremely difficult for [the applicant's wife], who is a non-Arab Christian, to adjust to life in that country." Counsel points to several newspaper articles related to controversy over religious freedom in that country. The documentary evidence submitted on appeal indicates that in August 2011, six Moroccans were arrested for having a picnic in protest of a law prohibiting the public consumption

of food during Ramadan. The documentary submissions also indicate that the civil law status of women is governed by an Islamic Civil Code. Taken together, the AAO finds the documentary submissions insufficient to demonstrate that the applicant's wife would be targeted for discrimination or singled-out should she relocate to Morocco with the applicant. The documentary submissions seem to relate mostly to an incident in 2011 that was provoked by a protest. While we acknowledge the evidence submitted, there is not sufficient evidence in the record from country conditions sources showing that individuals are being persecuted or discriminated against routinely in Morocco because of religious beliefs, gender, or immigration status. Accordingly, the record evidence is insufficient to demonstrate that the applicant's wife would suffer extreme hardship in Morocco because of her religious beliefs and language barriers.

Additionally, evidence in the record reflects that the applicant's wife stated to Dr. [REDACTED] that she would remain in the United States with her daughter in the event of the applicant's removal to Morocco. Here, as the applicant's wife has not asserted, and the record does not otherwise demonstrate difficulties to her were she to relocate to Morocco with the applicant, the AAO cannot make a determination of whether the applicant's wife will suffer extreme hardship upon relocation.

The documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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.