



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **JAN 07 2013**

Office: DETROIT

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.

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 in accordance with the instructions on Form I-290B, 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 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.

*R. Rosenberg*  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Detroit, Michigan. 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 Kenya 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 procuring a visa and admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with his U.S. citizen spouse.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated September 14, 2011.

On appeal the applicant states most of his property and money in Kenya was taken by relatives and he has nothing there for his family and no way to provide for them. With the appeal the applicant submits a statement from his spouse and copies of two previously-submitted documents pertaining to custody of his spouse's children from previous relationships. The entire record was reviewed and considered in rendering 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.

Section 212(i) of the Act provides that:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

Prior to addressing whether the applicant qualifies for a waiver, the AAO will consider the issues related to the applicant's inadmissibility.

The Field Office Director found that applicant used a fraudulently-obtained I-20 in order to receive an F-1 student visa to study in the United States. According to the Field Office Director, the applicant obtained the F-1 student visa by fraud or misrepresentation. The Field Office Director further noted that after having obtained the F-1 student visa the applicant never attended the school, that the applicant had made a statement to a school official and learned that the I-20 was fraudulent, and that the applicant had been advised of his inadmissibility and the opportunity to seek a waiver.

Based on this the Field Office Director found the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for misrepresentation.

On appeal the applicant asserts that he went to the school for which the I-20 was obtained and met with the director of admissions who confiscated his passport. The applicant contends he had been deceived and did not knowingly buy an I-20 as stated by USCIS. In a sworn statement given to USCIS the applicant asserted that in Kenya he had no internet access so had another person process an application for him to study in the United States. The applicant stated he gave that person required documents and paid a fee. The applicant stated that he told the interviewing consular officer that he had no relatives in the United States, intended to study, and had funds that his mother would send him. The applicant stated that he had presented to the consular officer his passport, a bank statement from his mother, land and vehicle titles, high school transcripts, an I-20 and a letter from his church pastor, and also said that he planned to return to Kenya. The applicant stated that after arriving in the United States he went to the university only to learn not all the documentation had been received so his application incomplete and that the I-20 was not genuine. The applicant stated he attempted to reapply, but his mother had been defrauded of the money intended to support him, so friends advised him to get a job to earn money for school. The applicant stated he never earned enough money to return to Kenya.

The AAO notes that Service records indicate the applicant informed the university that he had purchased the I-20 and the applicant has stated multiple times that he had obtained the form through a third party rather than from the school directly. The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. The issue, therefore, becomes whether the applicant's submission of the I-20 constitutes a willful misrepresentation of a material fact that would render him inadmissible under section 212(a)(6)(C)(i) of the Act.

Based on the evidence on record, the applicant has not established he was unaware of the fact that the Form I-20 was not properly attained. Given that the applicant submitted other documentation to the consular officer to establish his eligibility and was interviewed for a visa, he had reasonable understanding and opportunity to inform the consular officer how and where the I-20 was attained.

Therefore the AAO finds the applicant knowingly presented a fraudulent Form I-20 in order to obtain a student visa and admission to the United States.

The AAO now turns to the applicant's eligibility for a waiver of inadmissibility. 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. The applicant's wife is the only qualifying relative in this case. 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 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. *Salcido-Salcido v. INS*, 138 F.3d 1292 (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 applicant asserts he wants to provide for his children and the children of his spouse. In her statement the applicant's spouse explains that her two children from previous relationships consider the applicant as a father as he cares for them on a daily basis. She states that she does not believe she can support four children on her salary and would like to buy a home with the applicant. She states that the applicant has added stability to her life and the lives of her children by being a constant in their lives and by providing financially and emotionally. She also states that she cannot relocate the two children from previous relationships without court approval. The spouse further states that the children she has with the applicant would have no home and no money in Kenya and there would be no job for the applicant, but that growing up without a father figure is an enormous hardship. She states she was a single parent for seven years and does not want to go back to that and would not want to put her children through it.

In a previous statement the applicant contended he is the sole source of income for his family, responsible for housing, transportation and other expenses. The applicant stated he would be unable to find a job in Kenya with its high unemployment and the spouse's four children would suffer emotional distress at losing a father. He further stated the spouse's two oldest children cannot move because they have different fathers who live in the United States.

The AAO finds the applicant has established extreme hardship to his qualifying relative spouse if she were to relocate to Kenya to reside with him. Documentation submitted by the applicant shows the applicant's spouse is unable to relocate her two oldest children without the permission of the court and their respective fathers, making it likely she would be forced to separate from her children were she to relocate to Kenya. Further, the record establishes that the applicant's step-children are natives and citizens of the United States, integrated into the lifestyle and educational system, and speaking only English. The Board of Immigration Appeals (BIA) found that a fifteen year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of Kao and*

*Lin* to be persuasive in this case due to the similar fact pattern. To uproot the applicant's children at this stage of their education and social development and relocate to Kenya would constitute extreme hardship to them, and by extension, to the applicant's spouse, the only qualifying relative in this case. Alternatively, were they to remain in the United States, the applicant's spouse would experience hardship due to long-term separation from her children.

However, the AAO finds that the applicant has failed to establish that his qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. The applicant and his spouse state that the applicant provides financially and emotionally. The record contains no supporting evidence concerning the emotional hardship the applicant's spouse states she would experience due to long-term separation from the applicant or how such emotional hardships are outside the ordinary consequences of removal. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant asserts his spouse will experience financial hardship if he returns to Kenya, but other than a one-year lease, a single bank statement, a cell phone statement, and a car purchase in applicant's name, no documentation has been submitted establishing the spouse's current income, expenses, assets, and liabilities or her overall financial situation to establish that without the applicant's physical presence in the United States the applicant's spouse will experience financial hardship. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986). The record has also not established that the applicant would be unable to support himself in Kenya, thereby ameliorating the hardships referenced by the applicant's spouse with respect to having to maintain two households. The applicant contends he would be unable to work because of high unemployment in Kenya. However the record does not contain any country condition information to support that the applicant would be unable to find work.

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). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has

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failed to establish extreme hardship to his qualifying 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 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.