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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: JAN 07 2013

Office: COLUMBUS, OHIO

FILE: [REDACTED]

IN RE: [REDACTED]

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:
[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 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,

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, Columbus, Ohio. 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 the Republic of Benin 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 admission into the United States by fraud or the willful misrepresentation of a material fact. 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, 8 U.S.C. § 1182(i), to live 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 October 6, 2011.

On appeal, the applicant's attorney asserts that the Field Office Director erred by denying the applicant's waiver application and that the applicant submitted sufficient evidence to demonstrate that the qualifying spouse will experience extreme hardship should the applicant's waiver application be denied. The applicant's attorney also indicates that the applicant "innocently mistakenly" stated that he was married on his nonimmigrant visa application.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); affidavits from the qualifying spouse and applicant; relationship and identification documents for the applicant and qualifying spouse; divorce documentation regarding the qualifying spouse's prior spouses; medical documentation regarding the qualifying spouse; financial documentation; documents responding to the Notice of Intent to Deny the Form I-130; photographs; an Application to Register Permanent Residence or Adjust Status (Form I-485) and an approved Form I-130. 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.

The record indicates that the applicant claimed to be married to [REDACTED] the mother of his child, on his nonimmigrant visa application, which he signed on November 25, 2008. However during his September 21, 2011 interview with U.S. Citizenship and Immigration Services (USCIS) to adjust status, the applicant denied that he was married in Benin and also denied that he claimed to be married on his nonimmigrant visa application.

The applicant explains on appeal that because he and [REDACTED] have a child, it is customary in Benin for people to refer to the couple as married. The applicant, his mother, his sister, [REDACTED] her parents and a friend indicate in affidavits that the applicant and [REDACTED]

were never married. The record also contains a "Certificate of Bachelorhood" from the mayor of Cotonou City, showing that the applicant was single in Benin. The affidavits from the applicant's mother, his sister and [REDACTED] parents indicate that the applicant and [REDACTED] were "never married either traditionally, customarily or legally." However, none of the affidavits provided in support of the applicant's explanation indicate that it is customary in Benin to refer to couples who have children together as married. Further, the applicant knew that he was not married when he affirmatively indicated on his nonimmigrant visa application that he was married and added [REDACTED] name as his spouse and her date of birth to the application.

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 consider 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, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements of a material misrepresentation are as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, 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).

Moreover, an intent to deceive is not a required element for a willful misrepresentation of a material fact. See *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975).

In this case, 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, the AAO finds that the applicant cut off a line of inquiry that was relevant to his request for a nonimmigrant visa and which might have resulted in a denial of his nonimmigrant visa application under section 214(b) of the Act. 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:

- (1) 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.

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-I-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 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 finds that the applicant failed to establish that his qualifying spouse would suffer extreme hardship if she remained in the United States and the applicant returned to Benin. The qualifying spouse states that she would suffer emotional, physical and financial hardships without the applicant's support. With regard to her emotional hardships, the record contains affidavits from the applicant and qualifying spouse stating that she suffers from bipolar disorder, anxiety and manic depression. The record also contains two pages of medical records for the qualifying spouse, consisting of lab results and handwritten and typed progress notes; the notes indicate that the applicant has "possible bipolar disorder," based on her statements about earlier diagnoses to the physician, and a history of depression. She is being treated with medication. Similarly, the applicant and his qualifying relative state that she suffers from other medical issues, including asthma and heart problems. The record contains medical notes from August 2011, when the qualifying spouse went to an emergency room with heart palpitations. The medical documents submitted with respect to the qualifying spouse's psychological and medical conditions were prepared for review by medical professionals and do not contain a clear explanation of the current medical condition of the qualifying spouse. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

With respect to the qualifying spouse's financial hardships upon separation, the record contains documentation of the qualifying spouse's income, banking documents and the qualifying spouse and applicant's lease. The applicant indicates that he has been the sole breadwinner in their home. However, the record contains no documentation to demonstrate that he financially contributes to the qualifying spouse or his step-children. Further, according to the applicant's Biographic Information (Form G-325A), his occupation is "student." The applicant failed to provide sufficient evidence to establish that the qualifying spouse would suffer emotional, physical or financial hardships as a result of separation from the applicant that, considered in the aggregate, are extreme.

The AAO also finds that the applicant has not met his burden of showing that his qualifying spouse would suffer extreme hardship if she relocated to Benin to be with him. Counsel's statement accompanying Form I-290B indicates that the applicant's spouse was born in the United States, has never left the United States and has no family ties to Benin. Although the assertions in the Form I-290B are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, according to the applicant's spouse, she has no family members living close to her and the applicant is her only source of familial support. Further, the qualifying spouse and applicant assert that she cannot relocate to Benin because she would not receive adequate medical care and the economic situation there would worsen her medical and psychological conditions. However, the record does not contain evidence regarding the country conditions in Benin or other evidence to corroborate claims that the country conditions in Benin would negatively affect the qualifying spouse. *See Matter of Soffici* at 165. The current record does not establish that the applicant's spouse would experience extreme hardship upon relocating to Benin.

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 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 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.