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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: JUL 19 2013 OFFICE: BALTIMORE, MD

FILE: [REDACTED]

IN RE:

APPLICANT: [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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

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 District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Uganda who has resided in the United States since August 29, 1999, when he was admitted pursuant to a B-1/B-2 nonimmigrant visa. He 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 that visa 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 Field Office Director concluded that the applicant misrepresented a material fact, his marital status, on his nonimmigrant visa application and was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. *See Decision of Field Office Director* dated March 7, 2012. The Field Office Director additionally found the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *Id.*

On appeal, which was filed on March 28, 2012 and received by the AAO on February 1, 2013, counsel contends in the statement on the Form I-290B that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for representations with respect to his relationship with [REDACTED] because he lacked the requisite intent. Counsel additionally asserts the Field Office Director failed to consider the cumulative effects of separation on the applicant's spouse, especially in light of the lengthy marital relationship and the spouse's financial situation. No additional documentation was submitted on appeal.

The record includes, but is not limited to, statements from the applicant and his spouse, letters from family, friends, and Ugandan officials, documentation of criminal proceedings, financial records, evidence of birth, marriage, divorce, residence, and citizenship, and other applications and petitions. 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:

- (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.

In the present case, the record reflects that the applicant indicated on two non-immigrant visa applications, dated April 19, 1999, and August 17, 1999, that he was married when in fact he was not. The applicant has submitted affidavits from family and friends, as well as letters from Ugandan officials, to establish he was not married to [REDACTED]. He states although he never married [REDACTED] he began living with her in 1988, and they had six children together. The applicant explains he "misused the word cohabitation for marriage" on his nonimmigrant visa application. *Affidavit from applicant*, April 17, 2008. Counsel contends the applicant considered himself as being in a marriage even though they were never formally married under Ugandan law. Counsel moreover states that given the applicant's belief with respect to his relationship with [REDACTED] he did not possess the requisite intent for inadmissibility under section 212(a)(6)(C) of the Act. Letters from [REDACTED] and other family and friends are submitted, indicating he was never married to her, and that they cohabitated for several years and had six children.

In the present matter, the record contains documentation demonstrating the applicant was never married to [REDACTED]. However, the applicant has not provided sufficient evidence to show his statements on the visa application with respect to his marital status were made without the requisite intent. The requirement that the misrepresentation is made willfully is satisfied by a finding that the misrepresentation was deliberate and voluntary. *Espinoza-Espinoza v. INS*, 554 F.2d 921, 925 (9th Cir.1977). Knowledge of the falsity of a representation is sufficient. *Id.*, citing *Matter of Hui*, 15 I & N Dec. 288 (BIA 1975). The record reflects the applicant and [REDACTED] were never legally married, nor were they considered married by customary tribal law. The applicant's assertion that he intended to indicate he was simply cohabitating with [REDACTED] however, is not supported by the record. The applicant wrote on both his nonimmigrant visa applications not only that he was married, but that his spouse's name was [REDACTED]. See *OF-156*, April 19, 1999 and August 17, 1999. The applicant has submitted no evidence to demonstrate [REDACTED] a non-spousal cohabiting partner, legally took the applicant's last name, or that adopting his last name in such a situation would be customary in Uganda. Given this, the AAO finds by checking the box indicating he was married, and by further representing that [REDACTED] took his last name, the applicant did not simply state he was living with a woman in a long-term relationship, but rather, that [REDACTED] took his last name pursuant to a marriage. Moreover, the applicant's own affidavit reflects the applicant knew he was not married, and he knew [REDACTED] did not take his last name pursuant to a legal or customary marriage.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of*

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Martinez, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Given the evidence of record, including affidavits from the applicant, [REDACTED] and members of the community, the AAO finds the applicant had the requisite intent, and that he misrepresented a material fact, his marriage. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured his nonimmigrant visa to the United States through fraud or misrepresentation. The applicant's qualifying relative is his U.S. citizen spouse.

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).

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. *See Salcido-Salcido v. I.N.S.*, 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’s spouse contends she will experience emotional and financial difficulties without the applicant present. She explains she loves the applicant, and needs him there for emotional support. She states she would be lost without him, and separation would be devastating. With respect to financial difficulties, she indicates the spouse works and pays for everything, and she has taken the opportunity to stay at home so she can spend time with the two children they have from previous relationships. The spouse concludes she relies on the applicant for financial as well as emotional support.

The record does not contain sufficient evidence of the family’s household expenses to support assertions of financial hardship. Furthermore, the AAO notes the applicant’s spouse indicated in her Form I-864, Affidavit of Support, that she worked as a geriatric nursing assistant. There is nothing in the record indicating she would be unable to resume working in that occupation, nor has the applicant submitted documentation of his financial contributions to the household. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Without sufficient details and supporting evidence of the family’s expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant’s spouse will face.

The record reflects the applicant and his spouse have been married since 2006, and that the spouse is emotionally attached to the applicant. While the AAO acknowledges that the applicant’s spouse would face 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, emotional, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to Uganda without his spouse.

The applicant makes no assertions and provides no documentation on the hardship his spouse would experience upon relocation. The AAO therefore concludes the applicant has failed to demonstrate his spouse would experience extreme hardship upon relocation to Uganda.

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 application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.