



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[REDACTED]

Date: **JUN 12 2013** Office: ATLANTA, GA

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 (the 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. 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, Atlanta, Georgia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Guinea who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant established extreme hardship, particularly considering his wife's medical complications, the fact that her entire family resides in the United States, and the fact that the couple owns a small business.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED] indicating they were married on June 2, 2003; letters from the applicant; letters from [REDACTED]; letters of support, including from [REDACTED] mother; a psychological evaluation and a letter from a psychotherapist; letters from [REDACTED] physicians and copies of her medical records; copies of tax returns, bills, and other financial documents; letters from [REDACTED] employers; copies of photographs of the applicant and his family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

In general.—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) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien . . . .

In this case, the record shows that the applicant entered the United States in March 1998 using a false name. Counsel contends the applicant used a different name to escape Guinea because his name was on a watch list and that he promptly began using his proper name after entering the United States.

A timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for section 212(a)(6)(C)(i) ineligibility. 9 FAM 40.63 N4.6. Whether a retraction is timely depends on the circumstances of the particular case. *Id.* In general, it should be made at the first opportunity. *Id.* If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview. *Id.* The Board of Immigration Appeals has found that "recantation must be voluntary and without delay." *Matter of Namio*, 14 I. & N. Dec. 412, 414 (BIA 1973).

The burden of proving admissibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. In this case, the applicant has not met his burden of showing that he made a timely retraction of his misrepresentation. The record shows the applicant entered the United States by using a fraudulent tourist visa. It was after this material misrepresentation that he began using his true name. This case is therefore distinguished from cases in which aliens used fraudulent documents only *en route* and did not present them to U.S. officials for admission, but, rather, immediately requested asylum. *See, e.g., Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *cf. Matter of Shirdel*, 18 I&N 33 (BIA 1984). In the instant case, the applicant only began using his true name after having already procured admission to the United States by fraud. Therefore, the applicant did not make a timely retraction and is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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*, 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.

In this case, the applicant’s wife, [REDACTED] states that her husband is her best friend and the possibility of his removal has caused her psychological and physical hardship. She states she has been peri-menopausal for the past few years and that there are days when she cannot get out of bed. In addition, [REDACTED] contends she was diagnosed with heart disease and has high blood pressure, migraines, nightmares, anxiety attacks, dizziness, irritability, irritable bowel, weight gain, and crying spells. She also contends she takes pain medication daily for a back injury and that she gets regular mammograms due to a history of breast cancer. Furthermore, [REDACTED] contends that she and her husband started a cleaning franchise together, billing \$3,400 per month, but that her husband is responsible for two-thirds of the business.

After a careful review of the record, the AAO finds that if the applicant's wife, [REDACTED] relocated to Guinea to avoid the hardship of separation, she would experience extreme hardship. The record shows that [REDACTED] was born in the United States and the AAO recognizes her contention that her entire family resides in the United States. The AAO also takes administrative notice of the U.S. Department of State Travel Warning issued March 14, 2013 which warns U.S. citizens of the risks of travel to Guinea because the political situation there remains unpredictable, and urges U.S. citizens to exercise caution, to be particularly alert to their surroundings, and to avoid crowds, demonstrations, or any other form of public gathering. The record also contains documentation corroborating some of [REDACTED] contentions about her medical conditions. A letter from her physician states [REDACTED] suffers from GERD, stress-related irritable bowel syndrome, and hypertension. Copies of her medical records indicate she had atrial fibrillation, a heart catheterization in 2002, and that her mother had breast cancer. The AAO acknowledges that relocating to Guinea would disrupt the continuity of her health care treatment. Considering all of these unique factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if she relocated to Guinea to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

Nonetheless, [REDACTED] has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. Although the AAO is sympathetic to the couple's situation, if [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding [REDACTED] medical conditions, although the record shows she has some medical problems, the letters from her physicians in the record fail to describe the prognosis, treatment, or severity of her conditions. Although her physician states that it would be "preferable" for [REDACTED] to be with her husband who can care for her medical needs, there is no suggestion in the record that she is limited in any way or that she requires her husband's assistance. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed. Regarding psychological hardship, the record contains a psychological evaluation diagnosing [REDACTED] with Adjustment Disorder with Mixed Anxiety and Depressed Mood and Acute Anxiety Disorder. Although the input of any mental health professional is respected and valuable, neither the psychological evaluation nor the letter from a psychotherapist show that [REDACTED] hardship would be unique or atypical compared to others separated from a spouse as a result of inadmissibility or exclusion. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). Regarding financial hardship, the record contains insufficient documentation to evaluate the extent of [REDACTED] hardship. Although the record shows the applicant has a cleaning franchise that the couple contends they built together, the record also indicates that [REDACTED] is the sole proprietor of "Your Travel Bu" described as an urban transit business. Neither the applicant nor [REDACTED] addresses this urban transit business. In addition, although the record contains copies of tax returns, none of the returns in the record are complete returns that contain all pages. For instance, the record shows that the couple own rental property that is rented out for \$1,650 per month. However, there is no indication in any tax return showing rental income, and [REDACTED] accounting of her finances fails to include rental income.

Moreover, as counsel contends, the couple just purchased land together in order to build their “dream home,” and according to [REDACTED] herself, in October of 2006, they already “built a brand new luxury townhouse together.” Without a complete and accurate accounting of the couple’s businesses, assets, and income, there is insufficient evidence to address the extent of [REDACTED] financial hardship. Even considering all of these factors cumulatively, there is insufficient evidence showing that the hardship the applicant’s wife will experience amounts to extreme hardship.

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 applicant’s wife, the only qualifying relative in this case.

A review of 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 application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely 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.