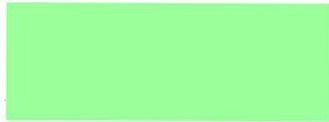


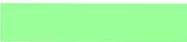


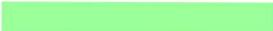
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DATE: **MAR 13 2013**

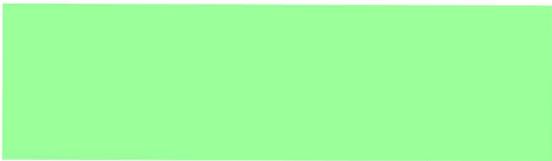
OFFICE: COLUMBUS

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Immigration and Nationality Act section 212(i); 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.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg, Acting Chief
Administrative Appeals Office

(b)(6)

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

The applicant, a native and citizen of The Gambia, was found inadmissible 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 fraud or willful misrepresentation of a material fact. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States with her U.S. citizen spouse. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her spouse.

In a decision dated July 18, 2012, the Field Office Director concluded that the applicant did not establish that her U.S. citizen spouse would suffer extreme hardship and the application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant states that the applicant's misrepresentation was not willful and that the evidence illustrates that the applicant's U.S. citizen spouse will, in fact, suffer from extreme hardship if he is separated from the applicant or if he were to relocate to The Gambia to reside with the applicant.

In support of the waiver application, the record includes, but is not limited to legal arguments by counsel for the applicant, letters from from the applicant's spouse, a letter from the applicant, a psychological evaluation of the applicant's spouse, medical records for the applicant and her spouse's children, school records for the children, letters from the applicant's family in The Gambia, employment and financial documents for the applicant and her spouse, documentation of property ownership for the applicant's spouse, country conditions information for The Gambia, letters of support concerning the applicant, and documentation concerning the applicant's immigration history.

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 was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(6)(C) of the Act, which 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 indicates that the applicant procured admission to the United States under the visa waiver program using a British passport that was issued to another individual, but that was altered to include the applicant's photograph. The applicant claims that she did not see the passport and the applicant's attorney, on appeal, argues that the applicant did not deliberately or voluntarily obtain admission to the United States using fraud or misrepresentation.

In regards to the willfulness of the applicant's stated misrepresentations, 9 FAM 40.63 N5.1, in pertinent part, states that:

The term "willfully" as used in section 212(a)(6)(C)(i) of the Act is interpreted to mean knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately made an untrue statement.

Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis to be persuasive.

The record indicates that the applicant was in possession of the British passport that she used to enter the country and that she was aware that she entered the country using the name and passport of another individual. There is no evidence in the record to suggest that the applicant believed that she had the right to use a British passport to enter the United States under the visa waiver program. The applicant is a native and citizen of the Gambia and not a native or citizen of Great Britain. The applicant states that she discovered that an altered passport was used after her admission to the United States, but provides no evidence to support this assertion. Even if the applicant did not physically possess the passport at the time of her admission, she remains responsible for the actions of her representative at the time. See Memo, from Lori Scialabba, Act. Assoc. Dir., Dom. Ops., Donald Neufeld, Assoc. Dir., Refugee, Asylum and Int. Ops., Pearl Chang, Act. Chief, Off. of Pol. and Stra., U.S. Citizenship and Immigration Serv., to Field Leadership, *Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators* 13 (March 3, 2009) (stating that the applicant is responsible for action taken by a representative if the applicant is aware of that action). Moreover, the record does not contain any documentation that the applicant lacked the capacity to exercise judgment at the time of her admission. Counsel for the applicant suggests that the applicant was a victim of trafficking, however, there is no evidence in the record to support that assertion. Nor is there any evidence that the applicant ever reported the actions of her claimed trafficker. The burden of proof is on the applicant to establish by a preponderance of the evidence that she is not inadmissible. See section 291 of the Act; see also *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978). Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)). The AAO finds that to the extent that the applicant claims that her misrepresentation was not willful, this contention lacks merit. As a result of the applicant's use of fraud or misrepresentation to procure admission to the United States, the applicant is inadmissible under section 212(a)(6)(C) of the Act. This is a permanent ground of inadmissibility.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

- (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 in this case is the applicant's U.S. citizen spouse. Hardship to the applicant is not directly relevant under the statute and will be considered only insofar as it results in hardship to the applicant's spouse. 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-Morales*, 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 deportation, 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, 885 (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 1292, 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.

On appeal, counsel for the applicant states that the applicant’s U.S. citizen spouse will suffer extreme hardship if the applicant is not admitted to the United States. In his statement, the applicant’s spouse states that, as a result of separation from the applicant, he will continue to suffer emotional and financial hardship. The applicant’s spouse’s hardship is based primarily on the cumulative hardship that he would suffer as a result of the applicant’s role in raising the couple’s three young children, two of which have special medical needs, and the emotional hardship he would suffer in losing the applicant, who he states is his only family and support in the United States. The record indicates that the applicant’s spouse came to the United States to seek asylum as a result of the persecution that he suffered in his native Sierra Leone. [REDACTED], a psychologist, evaluated the applicant’s spouse. In a report dated September 11, 2012, [REDACTED] stated that after three clinical interviews with the applicant’s spouse, she determined that the applicant’s spouse suffers from Post-Traumatic Stress Disorder as a result of the trauma that he experienced in his native Sierra Leone and in transit in Guinea Bissau. [REDACTED] states that the applicant’s symptoms are consistent with the applicant’s spouse’s “history with violent traumas and minimum support in his adapted country” and that she believes that the applicant and the couple’s children “...provide family stability he requires to continue to be a responsible provider, and loving father and husband...” Letters from family, friends, and neighbors of the applicant and her spouse confirm the applicant’s role as the major support system to her spouse as well as the primary caregiver to the couple’s children. The record also indicates that the applicant contributes substantially to the finances of the home through her employment as a home health care provider. Bank statements submitted in the record indicate that

the family makes ends meet with their two incomes. Although the record does not make clear the degree of financial hardship that the applicant's spouse would suffer in her absence, the record indicates that the applicant's spouse's employment requires him to be away from the home for long hours and as a result he would need to obtain child care for his three young children. The record also indicates that the applicant and her spouse's six year old son suffers from epilepsy and must regularly take medication and be under close supervision, heightening the level of care that he requires. All stated elements of hardship must be considered in aggregate to determine if the applicant's spouse will endure extreme hardship. While no single factor reaches an extreme level, the applicant has shown that the totality of her spouse's experience in the United States without the applicant would constitute extreme hardship.

As to whether the applicant's spouse would suffer extreme hardship if he were to relocate to The Gambia with the applicant, the evidence, in the aggregate, also shows that the hardship that would be experienced by the applicant's spouse in that circumstance would be extreme. The record indicates that the applicant's spouse is a native of Sierra Leone, where he suffered past trauma that has led to him being diagnosed with Post Traumatic Stress Disorder. Although the record indicates that the applicant's spouse has visited The Gambia, contrary to counsel's assertion that he has never had the occasion to visit that country, the record also establishes that the applicant's spouse now has important and strong ties in the United States. In particular, the record establishes that the applicant's spouse has three U.S. citizen children, one of which requires ongoing medical attention for epilepsy that he would not be able to continue to receive in the Gambia. The record also establishes that the applicant's spouse owns a home, has steady employment in the United States, and that his employment is the source of the family's health care insurance. Due to the documented economic and health care situation The Gambia, the applicant's spouse's past trauma and his child's special medical needs, the record establishes that the applicant's spouse would experience extreme hardship if he were to relocate to The Gambia to reside with the applicant.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the circumstances presented in this application rise to the level of extreme hardship.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Morales*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives)...

Id. at 301. The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse would face if the applicant were to reside in the Gambia, regardless of whether he accompanied the applicant or remained in the United States, the letters from family and community members concerning the applicant's character, and the lack of other unfavorable factors. The unfavorable factor is the applicant's procurement of admission to the United States through fraud or misrepresentation and periods of unauthorized presence and employment in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for an 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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.