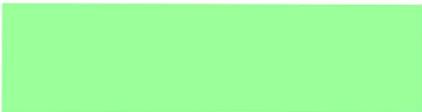


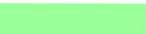


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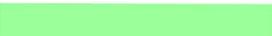


DATE: **MAR 26 2013**

OFFICE: HONOLULU

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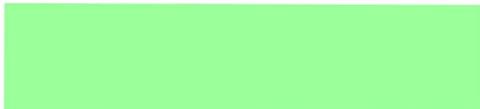
IN RE:

APPLICANT: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to 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,



Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Honolulu, Hawaii. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

The applicant is a native and citizen of Tonga 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 having procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a United States 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 District Director concluded that the applicant had failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of District Director* dated August 6, 2009.

On appeal the AAO determined that the applicant had failed to establish extreme hardship to his U.S. citizen spouse as the record did not contain sufficient evidence to show that hardships faced by the spouse would rise to the level of extreme. In its decision the AAO noted that the record did not contain supporting documentation concerning the physical ailments or the psychological condition of the spouse and that the record contained insufficient evidence to find that the spouse's financial and other hardships would be beyond the common consequences of inadmissibility or removal. The AAO further determined there was no evidence that the applicant and spouse, both natives of Tonga, would be unable to find employment there if they were to relocate and there was no information about the extent to which family members of each in Tonga could assist.

On motion counsel for the applicant asserts the misrepresented facts about the applicant's marital status on a 1997 nonimmigrant visa application were not material and that since the applicant's appeal was filed his U.S. citizen spouse had additional medical hardship and lost her employment. With the motion counsel submits a brief; a statement from the applicant's spouse; medical information for the applicant's spouse; and country information for Tonga. The record also contains a brief from previous counsel; a declaration from the applicant's spouse; and letters of support from family and friends. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that the applicant indicated on a nonimmigrant visa application that he was married, that no one had filed an immigrant visa petition on his behalf, and that no immediate family members were in the United States. At that time the applicant was in fact unmarried, had a pending visa petition filed on his behalf by his U.S. lawful permanent resident father, and had siblings living in the United States. The applicant is therefore found inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation.

Regarding the field office director's finding counsel contends that the applicant was unaware of the misrepresentations as his 1997 nonimmigrant visa application had been completed by a travel agent in English, which the applicant could neither read nor write. Counsel further contends that the misrepresentations were not material because when the applicant filed the nonimmigrant visa application, although he was not aware, an immigrant visa number was already available to him in categories either as a First Preference unmarried son or Third Preference married son, thus he would have gained no advantage by misrepresenting his marital status. Counsel further asserts that even had the true facts been known it would not have resulted in a determination that he was ineligible.

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. A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either the alien is excludable on the true facts, or 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 (BIA 1960; AG 1961).

Although counsel asserts the applicant was unaware of the contents of his visa application, the form bears the applicant's signature along with that of the preparer. The applicant had the duty and the responsibility to review all forms and statements prior to signing. The information provided for the nonimmigrant visa application is material as it supports whether the applicant had strong ties in his home country or intended to immigrate. This information is pertinent to the nonimmigrant visa application regardless of whether the applicant had an immigrant visa available. As such, the AAO

concur with the District Director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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*, 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 record contains references to hardship the spouse's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the spouse's child will not be separately considered, except as it may affect the applicant's spouse. Here the record shows that the spouse's son is nearly 18 years old with older siblings living in the United States and a statement from his biological father indicates he would help care for his son. The record does not support that hardship to the spouse's son would cause extreme hardship to the applicant's spouse.

Counsel contends the applicant's spouse has health ailments for which she would suffer extreme hardship if she relocated to Tonga due to inadequate medical care. Counsel asserts that since the applicant filed his appeal his spouse had a kidney removed due to an inoperable kidney stone, has been unable to manage diabetes and other health problems, has become unemployed, and can no longer pay for medications. Counsel cites country information about poor medical care in Tonga including a lack of dialysis machines which causes Tongans to migrate overseas to live near a dialysis facility.

In her affidavit the applicant's spouse states she is an adult caregiver, but has been unemployed since 2011. She states that she takes numerous medications for diabetes, hypertension, and hyperlipidemia and that she struggles financially to cover medication as unemployment insurance is not enough. She also states she needs frequent access to medical specialists and facilities. She further states the applicant helps care for her son.

The spouse's son states that without the applicant his mother would work longer hours away from him and that the applicant has made his mother happy after she experienced abuse in past relationships.

The record fails to establish that the applicant's spouse will suffer extreme hardship as a consequence of being separated from the applicant. Other than the applicant's spouse stating that the applicant helps care for her son and letters stating that the applicant makes his spouse happy after her other abusive relationships, the record fails to provide any detail or supporting evidence explaining

the exact nature of the qualifying spouse's emotional hardships and how such emotional hardships are outside the ordinary consequences of removal.

Counsel and the applicant's spouse note the spouse's health condition. Medical documentation lists the spouse's ailments and medications, indicates she underwent removal of one kidney in January 2011 due to an inoperable kidney stone, and notes that the spouse reported being unable to pay for medications. The medical record shows a treatment plan of exercise and proper diet with follow up visits. The documentation, however, does not provide detail or explanation to support that the spouse's current condition is so severe or that any required treatment such that it necessitates the applicant's presence in the United States.

Counsel and the applicant's spouse assert that the spouse will experience financial hardship as she is currently unemployed. However, the applicant's spouse states that she became unemployed in the fall of 2011 due to the death of her most recent patient, and the record does not establish that the spouse, as an adult caregiver, is unable to find another position. Nor has any documentation been submitted establishing the spouse's current expenses, assets, liabilities, overall financial situation, or the applicant's contribution to establish that without the applicant's physical presence in the United States the applicant's spouse will experience financial hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's husband would face as a result of his separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

The AAO also finds the record fails to establish that the applicant's spouse would experience extreme hardship if she were to relocate abroad to reside with the applicant. The record shows the applicant's spouse is a native of Tonga with family remaining there. Counsel and the applicant's spouse assert Tonga's medical facilities are insufficient to treat the spouse's health problems. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that the applicant's spouse suffers from such a condition. The record contains copies of medical records with medical terminology and laboratory results, but lacks a clear explanation from her treating physician of the spouse's current medical condition to establish that she would experience extreme hardship if she were to relocate to Tonga. The medical documentation shows a treatment plan of exercise, proper diet, and follow-up visits. Although country information on record indicates Tonga has a recognized need to improve the quality of and access to health care, the medical documentation submitted does not support that the applicant's spouse would experience extreme hardship if she were to relocate.

On motion counsel has not addressed any financial hardship the applicant's spouse may experience if she were to relocate. Submitted country information provides general economic conditions for

Tonga, but does not establish that the applicant's spouse would be unable to find employment were she to relocate to reside with the applicant.

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.