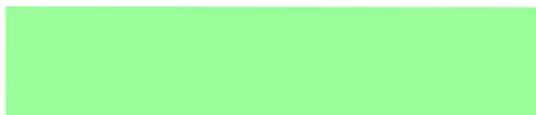


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **NOV 27 2013**

Office: SPOKANE, WA

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:

SELF-REPRESENTED

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 that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Spokane, Washington, denied the waiver application and 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 Kenya 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 her husband 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, the applicant contends she established extreme hardship to her husband, particularly considering his health conditions, financial situation, farm activities, and the violence in Kenya.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, Mr. [REDACTED] indicating they were married on June 8, 2010; a statement from the applicant; statements from Mr. [REDACTED] letters of support; a letter from Mr. [REDACTED] sister; a letter from the applicant's employer; a letter from Mr. [REDACTED] employer; copies of tax records; a letter from Mr. [REDACTED] physician and copies of medical documents; a copy of the U.S. Department of State's Travel Warning for Kenya and other background materials; 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, and the applicant concedes, that she procured entry to the United States through willful misrepresentation. Specifically, the record shows that the applicant stated in her visa application that she was married, had three children, and had no family in the United States when, in fact, she was not married and had two children, one of whom was living in the United States with the applicant's sister. Therefore, the applicant 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 husband, Mr. [REDACTED] states that in April 2008, his right hand was crushed while he was working as a millwright. He states he has undergone six hand surgeries and has a permanent 25% disability in his dominant hand. He contends that after his accident, he moved in with his parents on the family's farm, which was run down and neglected because they could not take care of it given their age. Mr. [REDACTED] states that since he and his wife got married, they live on his family farm, have been able to restore it, and are in the process of becoming certified organic producers. According to Mr. [REDACTED] a farmer's life is very demanding and he needs his wife. He asserts that without his wife, he cannot keep their herd of goats and care for their orchard and market, and that more than three generations on the family farm, started more than one hundred years ago, will end. He states that in addition to taking care of the farm, he and his wife both work other jobs, he has health insurance through his wife's employment, and his wife exercises and stretches his hand so that it does not become stiff. Moreover, Mr. [REDACTED] states that he has been divorced twice and even though he has persevered through two divorces and having his hand crushed, he is not equipped to fall into a suicidal depression if his wife's waiver application were denied. He asserts that although his home is paid for, it would be reprehensible to consider selling his portion of the family's estate. According to Mr. [REDACTED] neither he nor his siblings have any children and, therefore, without him having a family, the family line would end. Furthermore, Mr. [REDACTED] asserts he would not be able to live in Kenya considering the poverty, lack of cleanliness, lack of safety, racism, and unemployment.

After a careful review of all of the evidence, the record establishes that if the applicant's husband, Mr. [REDACTED] relocated to Kenya to avoid the hardship of separation, he would experience extreme hardship. The record shows Mr. [REDACTED] was born in the United States and his entire family resides in the United States. Mr. [REDACTED] would need to adjust to living in Kenya after having lived his entire life in the United States, a difficult situation made even more complicated considering he would be leaving his elderly parents with whom he has been living and caring for their family farm. Furthermore, the U.S. Department of State has issued a Travel Warning describing the risks of travel to Kenya in light of continuing and recently heightened threats from terrorism and the

high rate of violent crime. *U.S. Department of State, Travel Warning, Kenya*, dated September 27, 2013. Considering the unique factors of this case cumulatively, the record establishes that the hardship Mr. [REDACTED] would experience if he relocated to Kenya to be with his wife is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

Nonetheless, Mr. [REDACTED] has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. Although the AAO is sympathetic to the couple's situation, and understands the hard work and challenges Mr. [REDACTED] faces running a farm, nonetheless, if Mr. [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. According to Mr. [REDACTED] himself, his father took "an entire field out of his contract with the outside corporate farm operator so [the applicant and Mr. [REDACTED] could] increase [the] family operation." The record does not contain any statements from Mr. [REDACTED] parents and there is no evidence addressing the size or value of the family's farm. It is unclear from the record what portion of the farm was managed by an outside corporation and whether this corporation could again manage aspects of the family's farm. There is also no evidence in the record corroborating Mr. [REDACTED] assertions regarding his monthly expenses, such as copies of bills, and he does not address to what extent, if any, his parents contribute to their regular monthly expenses since he moved in with them. Without more detailed information and evidence addressing assets and expenses, there is insufficient evidence in the record to determine the extent of Mr. [REDACTED] financial hardship. In addition, according to Mr. [REDACTED] he has a sister who lives in San Diego and a brother who is estranged from the family, having had no contact with the family for over fifteen years. Although the record contains a letter from Mr. [REDACTED] sister, neither Mr. [REDACTED] nor his sister address to what extent, if any, she is involved (or could be involved) with the farm. Regarding Mr. [REDACTED] hand, the record contains documentation corroborating his contention that he crushed his right hand and has a 25% permanent impairment of his hand. However, the most recent documents in the record include a letter from his physician from February 2010 stating that "he is fixed and stable," and a copy of his occupational therapy evaluation from April 2010 indicating he is "independent with modifications" and recommending a home exercise program once per week for four to six weeks. Significantly, there is no updated evidence suggesting Mr. [REDACTED] requires any assistance due to his hand impairment. Without more detailed and recent information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed. With respect to emotional hardship, the record does not show that Mr. [REDACTED] hardship would be extreme, unique, or atypical compared to others separated as a result of inadmissibility or exclusion. See *Perez v. INS*, 96 F.3d 390 (9th 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). Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that if Mr. [REDACTED] remains in the United States, the hardship he will experience amounts to extreme hardship.

Extreme hardship warranting a waiver of inadmissibility can be found 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 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, the record does not establish that refusal of admission would result in extreme hardship to the applicant's husband, 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 husband caused by the applicant's inadmissibility to the United States. Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether she 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.