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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

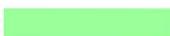


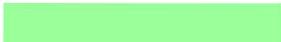
U.S. Citizenship  
and Immigration  
Services



DATE: OCT 10 2013

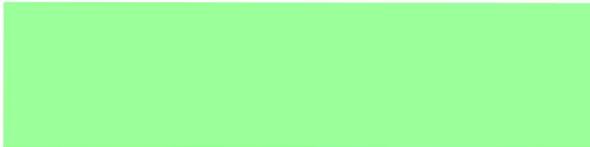
Office: PHILADELPHIA

File: 

IN RE: Applicant: 

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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Philadelphia, Pennsylvania, denied the waiver application, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted, the prior AAO decision will be withdrawn, and the underlying appeal sustained.

The applicant is a native and a citizen of Mali who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring a visa with false information and using it to enter the United States. He is seeking a waiver of inadmissibility in order to reside in the United States as the beneficiary of an approved spousal Petition for Alien Relative (Form I-130).

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director*, May 10, 2012. On appeal, the AAO found that while the applicant had established a qualifying relative would suffer extreme hardship by virtue of relocating to live with the applicant, he had not established a qualifying relative would suffer extreme hardship by virtue of separation from the applicant and, accordingly, dismissed the appeal. *Decision of the AAO*, May 28, 2013.

On motion, the qualifying relative contends the AAO erred in not finding that separation from her husband would cause her extreme hardship. In support of the motion, counsel provides a brief and several new documents, including updated hardship statements of the qualifying relative and her father; financial documentation, including a 2012 tax return and W-2s, car loan and bank account information, and bills for household and medical expenses; and health information, including medical exam reports and prescriptions. The record includes the supporting documents submitted with the Form I-601, the appeal of the waiver denial, and the current motion. The entire record was reviewed and considered in rendering this decision.

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

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)(1) of the Act provides:

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 indicates that the applicant paid someone \$5,000 to prepare his visa application, that he signed an application falsely stating that he was married and had one child, that a Consular Officer issued him a visitor's visa based on these misrepresentations regarding his ties to Mali, and that he used this visa to gain admission to the United States on February 12, 2000. The applicant does not contest inadmissibility, but contends that his wife will suffer extreme hardship unless he is granted a waiver permitting him to remain in the country.

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 includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant or relatives other than his parents can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. 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 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.

We previously determined that the applicant established that relocating to Mali would impose extreme hardship on his wife, and will not revisit this finding, only our conclusion that the record failed to establish that his wife would suffer extreme hardship due to separation from her husband.

Regarding separation, the applicant’s wife claims she will experience emotional, financial, and physical hardship due to the applicant’s inadmissibility. Regarding emotional hardship, the record reflects that the couple married in 2008, having met several years earlier. The qualifying relative asserts that the applicant’s emotional support has helped her follow a strict dietary regimen necessitated by medical conditions including obesity, type 2 diabetes, sleep apnea, high blood pressure, elevated white blood cell count, degenerative disc disease, and osteoarthritis. She reports that he uses his culinary skills to do most of the household cooking, thus sparing her the pain of having to spend time standing, and the record shows she is also being treated with prescription medications. Her doctor specifically notes the qualifying relative’s need for spousal psycho-social support to help her meet the challenges of her medical conditions, as well as daily examination of her feet due to high risk of infection incident to diabetes.

The qualifying relative states that her parents are elderly, have serious medical conditions, and rely on her physically and financially, and claims her ability to render assistance depends on her husband’s help. The evidence reflects that her mother and father are natives of Greece and naturalized U.S. Citizens, are 72 and 81 years old, and have limited English capabilities, making them reliant on her for translation. The evidence indicates that they both have mobility problems

even more serious than their daughter's and their sole income consists of the nearly \$16,000 in annual social security benefits they receive. The applicant's wife reports that, despite her parents each having children from a prior marriage, she is their only child together and the only one of her five step-siblings available to help.<sup>1</sup> Her father confirms that, after he and his wife took out a reverse mortgage on their home in 2008 to cover living expenses, his daughter and husband moved in with him and his wife to reduce household costs, and they assist by paying property taxes, homeowner's insurance, and other living expenses.

We previously observed in dismissing the appeal that, while the record contained substantial documentation regarding the qualifying relative's medical conditions, there was little evidence that the applicant's parents would be unable to provide for themselves physically or that the applicant or his spouse had actually provided any financial support to them. Newly-provided evidence, including the qualifying relative's 2012 joint tax filing with the applicant, discharge instructions and hospital bills from her mother's May 2013 hernia surgery, home repair bills naming the applicant or his wife, and her father's statement, supports their claims of financial support. Although the applicant's wife remains the primary breadwinner, his increasing income supports her contention that his wages are an integral part of the economic stability of an extended family in which the other three members have significant medical problems limiting daily activities and requiring daily monitoring. Medical reports support the claim that her health conditions are sufficiently serious that the applicant's absence will make it more difficult for her to stay gainfully employed and care for her parents and that any hardship to her parents will represent an additional hardship to the applicant's wife.

For all these reasons, the cumulative effect of the physical, emotional, and financial hardships the applicant's wife and parents will experience due to his inadmissibility rises to the level of extreme. The documentation on record, when considered in its totality, reflects that the applicant has established his wife will suffer extreme hardship if he is unable to live in the United States as a permanent resident. Her situation, as someone who both suffers from serious medical conditions and provides the primary support for two elderly parents also with significant health problems, is not typical of individuals separated as a result of removal or inadmissibility. The AAO concludes based on the evidence provided that, were his wife to remain in the United States without the applicant due to his inadmissibility, she would suffer extreme hardship beyond those problems normally associated with family separation.

The documentation on record, when considered in its totality, reflects the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States

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<sup>1</sup> She explains that her father has lost contact with his two children, while two of her mother's children live in Greece. The third of her mother's children is an unemployed, 49-year-old widow and single parent who lives five hours away.

which are not outweighed by adverse factors. See *Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957). In evaluating whether relief is warranted in the exercise of discretion, the BIA stated that:

[T]he factors adverse to the alien 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 the alien's bad character or undesirability as a permanent resident of this country. [citation omitted] 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).

*Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the applicant's wife would face if the applicant were to reside in Mali, regardless of whether she accompanied the applicant or remained here; the applicant's lack of any criminal record; supportive statements; 13 year residence here; a history of gainful employment; and his candid explanation regarding the circumstances of his fraudulent entry. The unfavorable factors in this matter are the applicant's willful misrepresentation.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the equities involved, including the passage of time since the applicant's violations, the AAO finds that a favorable exercise of discretion is warranted.

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 been met. Accordingly, our prior decision will be withdrawn and the appeal sustained.

**ORDER:** The motion is granted. The prior AAO decision is withdrawn and the underlying appeal sustained.