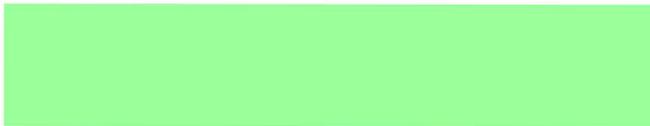


(b)(6)



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090
**U.S. Citizenship
and Immigration
Services**



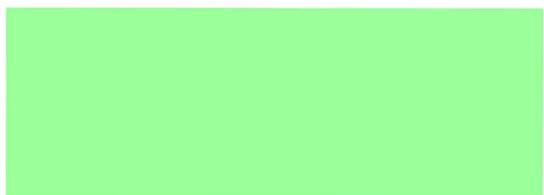
DATE: OCT 10 2013 OFFICE: MILWAUKEE, WISCONSIN

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Milwaukee, Wisconsin, denied the waiver application. The applicant, through counsel, appealed the Field Office Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. The applicant filed a motion to reopen and reconsider the AAO's decision. The AAO granted the motion and affirmed its previous decision. The matter is now before the AAO on subsequent motion. The motion is granted, the prior AAO decision is withdrawn and the underlying appeal is sustained.

The record reflects the applicant is a native of Togo and citizen of Togo and Nigeria 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 having procured admission to the United States through misrepresentation. The Field Office Director concluded the applicant failed to establish extreme hardship would be imposed upon a qualifying relative, and denied his Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The AAO dismissed the applicant's appeal and affirmed the Field Office Director's decision. The AAO also affirmed its previous decision upon granting the applicant's motion to reopen and reconsider a decision.

On subsequent motion, counsel asserts U.S. Citizenship and Immigration Services (USCIS) "grossly oversimplified" the consideration of hardship to the applicant's children although they are not qualifying relatives; the psychological evidence already in the record demonstrates the applicant's spouse would suffer "serious and severe" hardship in the applicant's absence; and additional documentation demonstrates the applicant's spouse's "desperate" financial situation.

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). As the applicant has submitted new documentary evidence to support his claim and asserted reasons for reconsideration, the motion to reopen and reconsider will be granted.

The record includes, but is not limited to: briefs and motions; correspondence; letters of support; identity, psychological, medical, employment, financial, and academic documents; Internet articles; and documents on conditions in Togo and Nigeria. The record also contains some documents in the French language.¹ The entire record, with the exception of the French-language documents, was reviewed and considered in rendering a decision on the appeal.

¹8 C.F.R. § 103.2(b)(3) states:

Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As certified translations have not been provided for all foreign-language documents, as required by 8 C.F.R. § 103.2(b)(3), the AAO will not consider these untranslated documents in support of the motion.

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

(i) 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.

...

(iii) Waiver Authorized.-For provision authorizing waiver of clause (i), see subsection (i).

The Field Office Director found the applicant inadmissible under section 212(a)(6)(C) of the Act for having obtained a nonimmigrant student visa by changing his name and date of birth and failing to disclose he was denied a student visa on two previous occasions. On motion, the applicant does not contest the finding of inadmissibility. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and he requires a waiver under section 212(i) of the Act.

Section 212(i) of the Act provides, in relevant part:

(1) The Attorney General [now Secretary of Homeland Security (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.

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. Counsel asserts that although children are not qualifying relatives, “a child’s hardship can be a factor in a determination whether a qualifying relative experiences extreme hardship.” *Brief in Support of Motion*, dated May 29, 2013. The AAO agrees with counsel’s assertion, but finds that hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant’s U.S. citizen spouse is the only demonstrated qualifying relative in this case. 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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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 BIA 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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 v. I.N.S.*, 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 motion, the applicant's spouse discusses the physical and psychological trauma she has experienced because of the applicant's inadmissibility, including crying at night, sleeplessness, her inability to eat, and weight loss; her inability to receive necessary medical or psychological treatment because of her lack of medical insurance; her loss of employment; her dependency on financial assistance from government agencies and friends; and her fear of receiving telephone calls from collection agencies concerning her financial obligations. She also discusses how the applicant's immigration matters have not allowed their children to receive the attention and care they need and how the applicant has served as their children's full-time caregiver while she continues to obtain necessary assistance. The AAO finds the record establishes the applicant's spouse would experience extreme hardship in the applicant's absence. The motion includes a physician's order dated May 28, 2013, indicating the applicant's spouse is currently under care and treatment for posttraumatic stress disorder, anxiety, and depression. Also, the record reflects the applicant serves as the primary breadwinner, and the motion includes payment of an unemployment insurance claim filed by the applicant's spouse and approval for federal and state social programs including Medicaid and Women, Infants, and Children (WIC). The motion further includes billing statements and collection notices demonstrating that the applicant's spouse has been in arrears for some of her accounts and undergoing difficulty in meeting her financial obligations. Although the record does not include evidence of the applicant's ability to financially support his family from Nigeria or Togo, his presence would be essential to the emotional and financial wellbeing of his spouse and her household. Accordingly, the AAO finds, considered in the aggregate, the evidence establishes the applicant's spouse would suffer extreme hardship upon separation from the applicant.

Further, in its previous decision, the AAO determined the applicant's spouse would experience extreme hardship upon relocation to Nigeria or Togo due to her strong social ties to the United States and the social and political conditions in Nigeria and Togo, considered along with the normal hardships associated with relocation. The applicant's spouse's circumstances have not improved since the AAO's previous decision. Accordingly, the record continues to reflect the cumulative effect of the hardship the applicant's spouse would experience upon relocation due to the applicant's inadmissibility rises to the level of extreme.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 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-Moralez*, 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 stated 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 for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion 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.*

The favorable factors in this case include extreme hardship to the applicant's U.S. citizen spouse, a history of stable employment, family and community ties, and the absence of a criminal record. The unfavorable factors include the applicant's obtaining a student visa through misrepresentation and failing to disclose he was denied a student visa on two occasions.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, 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.

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