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

U.S. Citizenship
and Immigration
Services

[REDACTED]
DATE **SEP 06 2013** OFFICE: YAKIMA, WA [REDACTED]

IN RE: [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:
[REDACTED]

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 that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of the Gambia who has resided in the United States since November 5, 2010, when he was admitted pursuant to a nonimmigrant visa. He 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 that visa to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. 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 Field Office Director concluded that the applicant failed to demonstrate his spouse would experience extreme hardship given his inadmissibility and denied the application accordingly. See *Decision of Field Office Director* dated February 11, 2013.

On appeal, counsel for the applicant submits a brief in support, letters from family and friends, medical records, a psychological evaluation and articles on psychological conditions, and documentation on country conditions in the Gambia. Counsel contends in the brief that the applicant's spouse would experience medical, psychological, and financial difficulties without the applicant present. Counsel moreover asserts that the spouse would experience hardship if she relocated to the Gambia due to the country conditions, separation from family members in the United States, language and cultural difficulties, as well as her educational and medical issues. Counsel lastly claims the applicant merits a favorable exercise of discretion.

The record includes, but is not limited to, the documents listed above, statements from the applicant's spouse, letters from family and friends, financial documents, articles on country conditions in the Gambia, evidence of birth, marriage, divorce, residence, and citizenship, and other petitions and applications. The entire record was reviewed and considered in rendering a decision on the appeal.

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 applied for a B-1/B-2 nonimmigrant visa at the U.S. embassy in Banjul, the Gambia. In his nonimmigrant visa application, filed on November 5, 2010, the applicant indicated he was married, his spouse lived with him, he was employed as a teacher, and he intended to visit a former student in Idaho. The applicant later admitted in a sworn statement that, while he was legally married when he applied for his nonimmigrant visa, he and his wife had been separated since 2007, and at the time she was living in Great Britain. The applicant's nonimmigrant visa was issued on August 27, 2010, and he filed for divorce from his wife the next day. The applicant stated he was admitted to the United States, he spent one night with his former student, and then immediately began residing with his present spouse, who he met online in 2010.

The Department of State's Foreign Affairs Manual [FAM] provides, in pertinent part:

Materiality does not rest on the simple moral premise that an alien has lied, but must be measured pragmatically in the context of the individual case as to whether the misrepresentation was of direct and objective significance to the proper resolution of the alien's application for a visa....

"A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either:

- (1) The alien is excludable on the true facts; or
- (2) The misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might have resulted in a proper determination that he be excluded." (Matter of S- and B-C, 9 I&N 436, at 447.)

DOS Foreign Affairs Manual, § 40.63 N. 6.1. Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis to be persuasive.

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) and *Matter of S- and B-C-*, 9 I. & N. Dec. 436 (BIA 1950; AG 1961).

To establish eligibility for a non-immigrant B1/B2 visa, section 101(a)(15) of the Act states, in pertinent part:

- (B) an alien...having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

The FAM further provides:

The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.

DOS Foreign Affairs Manual, § 41.31 N. 3.4.

By stating that he was married and living with his wife, when in fact he had been separated from her for three years and she was living in another country, the applicant led the embassy to believe that he had close family ties, namely, a wife, in his home country. By omitting the fact that he had been separated and was living elsewhere, he cut off a line of inquiry which was relevant to the applicant's request for a visitor visa. As such, the AAO concurs with the Field Office Director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud and/or misrepresentation with respect to his nonimmigrant visa application at the U.S. Embassy in Banjul, the Gambia. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. citizen spouse.

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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 applicant's spouse claims she will experience medical, psychological, and financial difficulties without the applicant present. She explains she had two surgeries in 2012 and 2013 for a blockage in her small intestines, and as a result she suffers with eating and has to undergo iron infusions 1-2 times a year. Medical records and a letter from her physician are submitted in support. In the letter, the physician states that the spouse had a small intestinal blockage possibly caused by previous gastric bypass surgery, and because additional complications can occur in the future, the physician recommended that the spouse stay in the United States where her surgeons are familiar with her medical needs. The spouse contends she has a hard time paying for her treatment and infusions even with the health insurance she has from her job as a medical assistant, and her financial situation has deteriorated so much that she had a car repossessed in August 2012. She adds that she only earns \$2000 a month, and she is behind on her mortgage and car payments. The spouse asserts that she needs the applicant's income to make ends meet. The spouse moreover states that she relies on the applicant for psychological support, especially given her traumatic childhood and her first marriage, in which she was abused. A forensic mental health evaluation is submitted on appeal. Therein, a forensic mental health evaluator describes the spouse's childhood and marriage. The evaluator reports that her family was very poor, the spouse was sexually abused and given alcohol by a male

relative when she was young, and she had many responsibilities early in life because both her parents were alcoholics. The evaluator adds that the spouse became pregnant at 17 years of age, and married an abusive and emotionally controlling man at age 21. The evaluator opines that due to the spouse's history, she relies on the applicant for emotional support, and is able to trust him without fear. The evaluator concludes that the spouse suffers from dysthymia and severe stress, and that she needs the applicant present to maintain psychological stability. Letters from family and friends are submitted which describe the spouse's emotional issues and the applicant's assistance with those issues.

The spouse additionally asserts she will experience extreme hardship upon relocation to the Gambia. She states that she was born in the United States, not the Gambia, and has no ties to that country except for the applicant. The spouse contends relocation would entail separation from her parents, her three adult children, and her brother, which would exacerbate her current emotional difficulties. She adds that she has no knowledge of the culture in the Gambia, and despite the applicant's efforts in teaching her, she has been unable to learn how to communicate in any Gambian languages. The spouse moreover claims that she would be unable to continue her education and become a registered nurse, as the educational facilities in the area the applicant lived are insufficient. Letters from Gambian citizens are submitted in support. Therein, the letter writers indicate that in the village the applicant was born in, Wollof as a spoken language is much more prevalent than English, and the nursing school and the hospital are too far to be accessed. Counsel additionally contends the spouse will lose her current job and benefits in the United States.

The applicant has demonstrated that his spouse would experience extreme hardship upon separation. The record contains consistent evidence indicating the spouse has suffered from traumatic events in her childhood, such as sexual abuse, physical injuries, neglect, and emotional abuse which have resulted in her psychological reliance on the applicant. Furthermore, evidence of record, including a mental health evaluation and letters from family and friends, indicate that the applicant's support has improved his spouse's emotional and physical well-being. The applicant has demonstrated that his spouse's emotional difficulties, which were caused by an abusive childhood and a difficult marriage, are beyond those normally experienced by relatives of inadmissible aliens.

The AAO therefore finds there is sufficient evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record establishes that the psychological / emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that she would suffer extreme hardship if the waiver application is denied and the applicant returns to the Gambia without his spouse.

The applicant has additionally shown that the spouse would experience extreme hardship upon relocation to the Gambia. The AAO notes that the spouse was born in the United States, and has significant family ties, including parents and two children, to this country. In contrast, the record reflects that the spouse's only tie to the Gambia is the applicant. Relocation to the Gambia would entail severing her family ties, and relinquishing her employment as a medical assistant in the United States. Furthermore, although the official language of the Gambia is English, the record contains sufficient evidence demonstrating that the spouse would have difficulties communicating in the

village the applicant was born in, as English is not widely spoken there. In addition to some communication issues, relocation would require the spouse to adjust to a different culture and standard of living. The record moreover suggests that the spouse may have difficulty accessing adequate medical facilities which may be necessary for treatment of her medical issues.

In light of the evidence of record, the AAO finds the applicant has established that his spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, medical, family-related, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to the Gambia.

Considered in the aggregate, the applicant has established that the applicant's spouse would face extreme hardship if the applicant's waiver request is denied.

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.

The negative factors include the applicant's misrepresentation, as well as his period of unlawful status in the United States. The positive factors include the extreme hardship to the applicant's spouse, the applicant's lack of a criminal record, and evidence of good moral character as stated in letters from family and friends.

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