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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: **SEP 12 2013**

Office: ST. PAUL

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. 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 waiver application was denied by the Field Office Director, St. Paul, Minnesota, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Burkina Faso 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 attempted to procure (and later procuring) a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. Specifically, the record establishes that the applicant misrepresented his marital status on two separate occasions in 2002 when applying for a visitor visa. The applicant claimed to be married when in fact he was single. The requests for nonimmigrant visas were consequently denied. In addition, in 2005, the applicant procured a nonimmigrant visa and subsequent entry to the United States by claiming to be married when in fact he was single. The applicant does not contest this finding of inadmissibility. Rather, he is applying for 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 had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated November 21, 2012.

On appeal, counsel for the applicant submits the following: a brief; a psychological evaluation pertaining to the applicant's spouse; evidence of the applicant's spouse's enrollment at [REDACTED] a letter from the applicant's step-child; photographs of the applicant and his family; financial and employment documentation; and information about country conditions in Burkina Faso. 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.

....

- (ii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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

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admitted for permanent residence, if it is established to the satisfaction of the Attorney General [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.

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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or his lawful permanent resident step-child can be considered only insofar as it results in hardship to a qualifying relative. 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-Moralez*, 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 v. I.N.S.*, 138 F.3d 1292, 1293 (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 U.S. citizen spouse asserts that she will suffer emotional and financial hardship were she to remain in the United States while the applicant relocates abroad due to his inadmissibility. In a declaration the applicant’s spouse explains that she is currently attending a nursing program full-time and she thus needs the applicant to help care for her daughter. She explains that her husband wakes her daughter up, makes her breakfast, takes her to the bus stop, picks her back up in the afternoon and cares for her until the evening when she gets home. The applicant’s spouse also notes that on weekends, she works double shifts to earn extra money and the applicant cares for her daughter. Without her husband physically present in the United States, the applicant’s spouse maintains that she would not be able to properly care for her child. The applicant’s spouse notes that her only other close relative in the United States is her father but he lives in New Jersey and is unable to travel often to see them. *Affidavit of Narser Dwah*, dated May 30, 2012.

To begin, on appeal counsel references that the applicant recently began working full time in a dollar store to help pay for the family’s expenses. *Brief in Support of Appeal*, dated January 17, 2013. It has thus not been established that the applicant’s spouse will experience extreme hardship if her husband has to relocate abroad and she has to become primary caretaker and provider to her teenage daughter. While the applicant’s spouse may need to make alternate arrangements with respect to her work and study schedule and the care of her child, it has not been established that such arrangements would cause her extreme hardship. Furthermore, no documentation has been provided establishing the applicant’s spouse’s current expenses, assets and liabilities, to establish that were the applicant to relocate abroad, she would not be able to support herself and her daughter and continue her academic pursuits. The financial documents provided by counsel do not provide a complete picture of the applicant’s spouse’s financial responsibilities. Moreover, no documentation has been provided establishing that the applicant specifically would be unable to obtain gainful employment in Burkina Faso that would permit him to assist his wife financially should the need arise. Nor has it been

established that the applicant's spouse would be unable to travel abroad to visit her husband. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Finally, with respect to the emotional hardship referenced, the report provided by Dr. [REDACTED] does not establish that the emotional hardship the applicant's spouse would experience were her husband to relocate abroad is beyond the normal hardships experienced by spouses separated as a result of removal. Nor does any documentation provided establish that the applicant's step-child would experience extreme hardship as a result of the applicant's removal. 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.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. The applicant's U.S. citizen spouse asserts that she does not want to relocate to Burkina Faso as she and her child would suffer. To begin, the applicant's spouse details that she and her child were born in Liberia and have no ties to Burkina Faso. The applicant's spouse contends that she and her daughter would experience hardship as a result of unfamiliarity with the country, culture, customs and language spoken. Further, the applicant's spouse details that she is currently enrolled in a nursing program at [REDACTED] and were she to relocate abroad, she would suffer academic disruption. Moreover, the applicant's spouse asserts that her daughter relocated from Liberia to the United States in 2011 and is becoming assimilated to the U.S. lifestyle and educational system and were she to relocate to Burkina Faso, she would experience social and academic hardship, thereby causing the applicant's spouse hardship. Finally, the applicant's spouse references the problematic country conditions in Burkina Faso, including high unemployment, poverty, substandard medical care, crime and human rights violations. *Supra* at 4-6.

The record reflects that the applicant's spouse and step-child have no ties to Burkina Faso. They are unfamiliar with the country, culture, customs and language spoken. The applicant's spouse became a lawful permanent resident almost ten years ago. Were she to relocate to Burkina Faso to reside with the applicant, she would have to leave her gainful employment, her academic studies, her father and her community. The applicant's spouse would also be concerned for her daughter's academic and social development in light of the fact that she would be uprooted from her friends and school in the United States so soon after having become a lawful permanent resident of the United States. Finally, the U.S. Department of State confirms that Burkina Faso is one of the world's least developed countries. *See Country Specific Information-Burkina Faso*, dated April 11, 2013. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

We can find extreme hardship warranting a waiver of inadmissibility 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, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The record, reviewed in its entirety, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships she would face rise to the level of "extreme" as contemplated by statute and case law.

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.