



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **APR 09 2014** Office: BALTIMORE, MD [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. 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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. 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 the Democratic Republic of Congo (Congo) 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 admission to the United States by fraud or willful misrepresentation of a material fact. The applicant's spouse, mother and son are U.S. citizens. He seeks a waiver of inadmissibility in order to reside in the United States.

The District Director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated June 12, 2013.

On appeal, counsel asserts that the District Director erred in not finding extreme hardship to the applicant's mother; the applicant's mother has multiple medical conditions; and additional evidence will be provided to establish her extreme hardship. *Form I-290B, Notice of Appeal or Motion*, dated July 12, 2013.

The record includes, but is not limited to, counsel's brief, medical records for the applicant's mother, statements from the applicant's spouse and mother, financial records, and immigration records for the applicant and his mother. 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, that:

- (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 that:

- (1) The Attorney General [now the 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.

The record reflects that the applicant presented a fraudulent passport and visa in the name of [REDACTED] to procure admission to the United States in 2003. Based on the applicant's willful

misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest his inadmissibility.

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 the applicant or child can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's mother or spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services 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.

The AAO will first address hardship to a qualifying relative upon relocation to Congo. Counsel states that the applicant's mother is 70 years old; she has osteoporosis, rheumatoid arthritis and hepatitis C; and her medical conditions make it very difficult for her to move abroad. He states that according to her medical records, she needs total knee and elbow joint replacements; she has been referred to an endocrinologist for goiter, an ophthalmologist for eye-plaque screening and a hematologist for anemia; she is unable to climb, bend, squat or crawl; she cannot be exposed to extreme cold, humidity, chemicals, dust, fumes or noises; given her physical limitations, she cannot relocate to Congo; and her medical conditions may contribute to her death. The record includes medical records for the applicant's mother that corroborate counsel's claims about her multiple conditions. The records also reflect that she takes several medications and has been referred to see specialists for goiter, eye-plaque screening, and anemia. Additionally, the medical documentation indicates that her arthritis is not fully controlled by medication due to her hepatitis C and she will likely require total joint replacements for her knees and elbows.

The record also reflects that the applicant's mother, a native of Congo, was granted asylum on January 10, 2000 and that she became a U.S. citizen in 2013.

The record reflects that the applicant's mother is elderly and has numerous serious medical conditions that are physically debilitating and likely to worsen without proper treatment. In addition, she was granted asylum from Congo and therefore either experienced persecution in the past or has a well-founded fear of future persecution there. Based on these factors and the normal impacts of relocation, the AAO finds that the applicant's mother would experience extreme hardship upon relocating to Congo.

The applicant's spouse also is a qualifying relative under section 212(i) of the Act. The record, however, does not include evidence of hardship to the applicant's spouse upon relocation to Congo. Therefore the AAO does not find extreme hardship to her upon relocating to Congo.

The AAO will now address hardship to the applicant's qualifying relatives upon remaining in the United States. Counsel states that the applicant's mother needs the applicant's assistance and the applicant is the only relative that she has in the United States. He states that she resides at a transitional women's emergency shelter that helps women work towards self-sufficiency; the likelihood of the applicant's mother achieving self-sufficiency is severely diminished; and she therefore needs the applicant's assistance for the rest of her life. He adds that the applicant plays a major role in helping his mother emotionally and financially; her mobility is severely limited; and she depends on him for everything. He also states that because the applicant's mother is not wealthy, she depends on charity.

The applicant's mother states that she has osteoporosis, arthritis and hepatitis C; the applicant is the only family member that she has in the United States; he helps her with almost everything; and she cannot imagine being away from him in her current condition. The record includes a newsletter and other information describing the center where counsel states the applicant's mother currently lives.

With respect to the hardship the applicant's spouse would experience upon remaining in the United States without him, counsel states that she does not work; the applicant provides for his spouse's basic needs; their marriage would be adversely affected if they were separated; and because they were married only a few years ago, they are still solidifying their bond. The applicant's spouse states that the applicant provides her with support, comfort and stability; he takes care of their expenses; and she would be devastated and heartbroken if he left the United States. The record includes copies of an insurance card, a lease, bank statements, credit cards and a cable bill for the applicant and his spouse.

Additionally, the record includes a letter from the applicant's son's mother to describe potential hardship to his son. She states that the applicant has developed a close relationship with his son; he pays for his son's tuition; and he is his son's role model.

The record reflects that the applicant's spouse and mother would experience difficulty without the applicant. However, other than his mother's own statement, the applicant submits no documentary evidence showing how he specifically supports her. Moreover, the applicant's son is not a qualifying relative, and the record does not include evidence establishing that his son's hardship would affect either his spouse or mother. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that a qualifying relative would experience extreme hardship upon remaining in the United States.

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 in 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

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hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Therefore, the AAO finds that no purpose would be served in discussing whether he merits a waiver as a matter of overall 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.