



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

Date: **APR 10 2014** Office: NEBRASKA SERVICE CENTER [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:

SELF-REPRESENTED

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 Director, Nebraska Service Center, Lincoln, Nebraska, denied the waiver application and 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 Ghana 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 attempting to procure admission to the United States through fraud or misrepresentation. The record reflects that in 2004 the applicant used a false identity in an attempt to obtain a visa to the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to reside with her spouse in the United States.

The director found that the applicant had established extreme hardship to her United States citizen spouse if he were to relocate to Ghana as a consequence of her inadmissibility, but had failed to establish that her qualifying relative would experience extreme hardship if he remains in the United States. The application was denied accordingly. *See Decision of the Director* dated August 24, 2013.

On appeal the applicant's spouse contends in the Notice of Appeal (Form I-290B) that the applicant had not intended to misrepresent herself, but was herself a victim of fraud, and that information submitted shows that he is suffering hardship. With the appeal the applicant's spouse submits a statement and documentation related to an auto accident involving two of his children. The record also contains a statement from the applicant, financial documentation, and letters of support for the applicant and her spouse from family and community members.

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 that:

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 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.

Prior to addressing whether the applicant qualifies for a waiver, the AAO will consider the issues related to the applicant's inadmissibility. The director found that the applicant had made a material misrepresentation to gain a benefit under the INA by applying for a nonimmigrant visa in 2004 using a fraudulent passport. Based on this the director found the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for misrepresentation.

On appeal the applicant's spouse asserts that the applicant had been approached by someone who stated that he could, for a fee, obtain a visa for the applicant to go the United States as part of a tour group. The spouse contends that the applicant paid the fee and provided her correct identity information. The spouse states that the applicant was not aware until immediately prior to her visa interview that information in the passport belonged to another person, but was told to proceed as the money could not be refunded. The spouse states that following the visa interview the applicant confronted the person who had provided the passport and was promised that he would appeal to the U.S. Embassy, but that she was later unable to locate him.

The AAO notes that neither the applicant nor her spouse contend that the applicant did not present fraudulent information, but they assert that as she was unaware until prior to the visa interview that the information was incorrect she was the victim of fraud. When the applicant became aware of the false information she had the opportunity to cancel or reschedule her visa interview, or to disclose the circumstances to the consular officer, none of which she did. As such, the applicant and her spouse have not presented sufficient evidence to overcome the inadmissibility determination of the director.

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 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. *Salcido-Salcido v. INS*, 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.

As noted above, the director found that the applicant had established her spouse would experience extreme hardship were he to relocate to Ghana to reside with the applicant due to her inadmissibility. As such, this criterion will not be addressed on appeal.

The AAO finds that the record fails to establish that the applicant's qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. On appeal the applicant's spouse states that he is suffering due to the increased number of people in his household with the applicant's children, and by being a single parent, and that if the applicant were here she would be

assisting him. He states that he has increasing debts and his two older children are caring for the applicant's younger children, but that the older children were involved in an auto accident with injuries that needed attention, which has increased his burden. The spouse states that he is a truck driver, and if the applicant were here it would lessen his fatigue so he could focus more on his driving duties.

The applicant states that with her two children from a previous relationship now living with her spouse, he faces financial hardship supporting the household while also sending money to her. The applicant states that her spouse is her best friend and constant companion. The applicant also states that the separation has caused her children emotional and psychological problems, and that they are deprived of their mother and crying for her.

Other than stating the applicant's spouse needs assistance raising the applicant's children, the applicant has not provided detail or supporting evidence explaining the exact nature of any emotional hardships the spouse is experiencing and how such emotional hardships are outside the ordinary consequences of separation. The applicant also indicates that her spouse provides financially for her. Although documentation in the record shows that the spouse sends money to the applicant, it has not been established that the applicant is unable to support herself in Ghana, thereby ameliorating the hardships referenced by the applicant with respect to her spouse having to maintain two households. Further, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The record contains references to the hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse. In the present case the record does not establish that the separation of the applicant's children from her causes extreme hardship to the applicant's spouse.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States is typical to individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's spouse would face as a result of his separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

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

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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.

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.