



(b)(6)

[REDACTED]

Date: APR 15 2014

Office: SEATTLE [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:
[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,

Ron Rosenberg

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Seattle, 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 Ethiopia 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 procured a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. The applicant does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse and their children, born in 2003 and 2009.

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 August 21, 2013.

On appeal, counsel for the applicant submits the following: a brief; evidence of the applicant's and her spouse's family ties in the United States; documentation evidencing the applicant's spouse's activities in opposition to Ethiopia's current ruling party, EPRDF (Ethiopian People's Revolutionary Democratic Front); information about country conditions in Ethiopia; and confirmation that the applicant does not have a criminal record in Washington. 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 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.

With respect to the field office director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, the record establishes that the applicant misrepresented her ties to the United States when she applied for a B Visa in July 2007. Specifically, the applicant failed to disclose the presence of her child and the child's father (now also the applicant's husband) in the United States on her nonimmigrant visa application. By failing to disclose that she had a child residing in the United States, she 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 or willful misrepresentation.

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 the children 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 he will suffer emotional and financial hardship were he to remain in the United States while the applicant relocates abroad due to her inadmissibility. In a declaration he explains that he and the applicant have been together since 2000, and long-term separation from her would cause him hardship. The applicant’s spouse further maintains that prior to leaving Ethiopia and since arriving in the United States, he has been an opponent of Ethiopia’s ruling party, and were he to return to Ethiopia to visit the applicant, he would fear arrest and imprisonment. Moreover, the applicant’s spouse details that he is a distance truck driver and is oftentimes gone for long hours and even for a few days at a time, and as a result, he relies on the applicant to be primary caregiver to his daughters. Were his wife to relocate abroad, the applicant’s spouse asserts that having to become primary caregiver and provider to his young daughters would cause him hardship. See *Second Declaration of* [REDACTED], dated September 20, 2003.

With respect to the emotional hardship referenced, the record contains documentation establishing that the applicant’s spouse has been actively involved in supporting the opposition movement while in Ethiopia and when he relocated to the United States. [REDACTED] a native of Ethiopia and a friend of the applicant’s spouse, states that the applicant’s spouse was actively opposed to the government while in Ethiopia and has attended opposition events while in the United States. [REDACTED] notes that recently the applicant’s spouse attended a protest against

EPRDF in Seattle and a photo of him appeared in a [REDACTED] and as a result, it would not be safe for him to return to Ethiopia, even for a visit. *See Sworn Statement of [REDACTED]* dated September 20, 2013. The referenced photo has been provided by counsel. Counsel has also submitted extensive documentation outlining the human rights violations in Ethiopia against political opponents. As noted by the U.S. Department of State, the most significant human rights problems in Ethiopia include: restrictions on freedom of expression and association, including through arrests; detention; politically motivated trials; harassment; and intimidation of opposition members and journalists. *See Country Reports on Human Rights Practices for 2013-Ethiopia, U.S. Department of State*. Further, the applicant has evidenced that her husband is self-employed as a truck driver and she is a homemaker and primary caregiver to their two young children. The record reflects that the cumulative effect of the emotional and financial hardship the applicant's spouse would experience due to the applicant's inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to her inadmissibility, the applicant's spouse would suffer extreme hardship if he remains in the United States.

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 he does not want to relocate to Ethiopia as he and his children would suffer. To begin, the applicant's spouse details that he may be arrested and detained as a result of his support of the opposition party while living in Ethiopia and his current activities in the United States in support of the opposition. In addition, the applicant's spouse explains that he has extensive family ties in the United States, including the presence of his mother and father and eight siblings, and long-term separation from them would cause him hardship. Furthermore, he contends that his daughters would experience hardship were they to relocate to Ethiopia as a result of the problematic country conditions, the lack of family in Ethiopia, and the fear that their father may be arrested and detained as a result of his political activities. Finally, the applicant's spouse details that he is gainfully employed in the United States as a truck driver and owns his own truck. *Supra* at 1-4.

The record establishes that the applicant's children, most notably Kenan, is fully integrated into the United States lifestyle and educational system. The Board of Immigration Appeals (BIA) found that a fifteen-year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the applicant's child at this stage of her education and social development and relocate to Ethiopia would constitute extreme hardship to her, and by extension, to the applicant's spouse, the only qualifying relative in this case. In addition, the record reflects that were the applicant's spouse to relocate to Ethiopia to reside with the applicant, he would have to leave his parents and siblings, his community, his friends and his business and he would be concerned for his and his daughter's safety and well-being in Ethiopia as a result of his past and present support of Ethiopia's opposition party, poor academic opportunities, substandard medical care and gender-based violence. It has thus been established that

the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen husband would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and children would face if the applicant were to relocate to Ethiopia, regardless of whether they accompanied the applicant or stayed in the United States; the applicant's community and family ties in the United States, including the presence of her mother and three siblings; and the apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's entry to the United States by fraud or willful misrepresentation and periods of unlawful presence while in the United States.

Although the immigration violations committed by the applicant are serious in nature, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's 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 appeal is sustained.