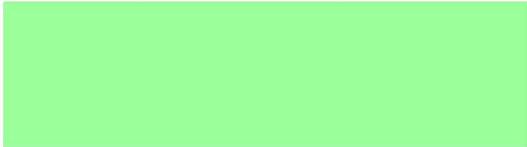




**U.S. Citizenship
and Immigration
Services**

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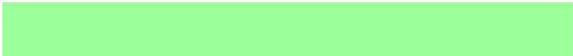


DATE: APR 18 2014

Office: WASHINGTON, DC

FILE: 

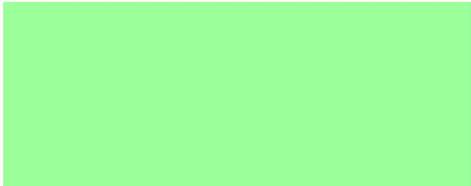
IN RE:

Applicant: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Washington, DC, denied the waiver application and the matter 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 pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends that the field office director failed to consider all of the evidence cumulatively and that the applicant established extreme hardship, particularly considering the applicant was granted withholding of removal to Ethiopia and her husband's chronic depression.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, Mr. [REDACTED] indicating they were married on November 17, 2008; an affidavit from Mr. [REDACTED] a psychological evaluation; copies of tax returns, bills, and other financial documents; numerous letters of support; letters from the applicant's employers; a copy of the U.S. Department of State's Country Specific Information for Ethiopia and other background information; copies of photographs of the applicant and her husband; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien

In this case, the record shows, and counsel concedes, that the applicant entered the United States in May 2001 using a passport that was not her own. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. To the extent counsel contends the applicant only used the fake passport because she was fleeing Ethiopia and applying for asylum in the United States, the applicant procured admission to the United States using the fraudulent passport. It was not until the applicant applied for asylum in March 2002, ten months later, that she admitted her true identity. This case is therefore distinguished from cases in which aliens used fraudulent documents only *en route* and did not present them to U.S. officials for admission, but, rather, immediately requested asylum. See, e.g., *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); cf. *Matter of Shirdel*, 18 I&N 33 (BIA 1984).

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.

In this case, the applicant’s husband, Mr. [REDACTED] states he met his wife at church and that she is his entire life. According to Mr. [REDACTED] they spend all of their free time together and are both very involved with their church. He states he has few friends and completely relies on his wife for everything, including his day-to-day happiness. He states that she has been a great blessing for him and that it would be catastrophic for him emotionally to lose her. In addition, Mr. [REDACTED] contends that he depends on his wife financially and that they both work and share their resources. Furthermore, Mr. [REDACTED] claims he cannot move to Ethiopia to be with his wife because he would fear for her safety. He also contends he has no way of earning a living in Ethiopia.

After a careful review of the entire record, the AAO finds that if the applicant’s husband, Mr. [REDACTED] decides to remain in the United States, he would suffer extreme hardship. The record contains a psychological evaluation describing Mr. [REDACTED] chronic depression. According to the social worker, when Mr. [REDACTED] was five or six years old, his mother was pregnant and lost a baby girl. The social worker contends that Mr. [REDACTED] was deeply affected by this loss and has internalized a high level of responsibility for the well-being of those he loves. In addition, the social worker reports that Mr. [REDACTED]’s father abandoned him around the same time and, as a result, he has a strong dependency on his wife and now fears being abandoned by his wife. The social worker diagnosed Mr. [REDACTED] with Adjustment Reaction with Depressed Mood, Chronic. The social worker concludes that Mr. [REDACTED] would feel overwhelmed by the loss of his relationship with his wife to the extent that it would compromise his identity, and contends he would live in constant fear that she would be harmed, tortured, or killed, in Ethiopia. In addition, the record contains an Order from an Immigration Judge granting the applicant withholding of removal to Ethiopia. The record therefore establishes the emotional hardship Mr. [REDACTED] would suffer if he remains in the United States without his wife, a difficult situation made even more complicated given his wife’s return to the country from which she was granted withholding of

removal. Moreover, the record contains ample financial documentation showing that the applicant is the main income earner and that without the applicant, Mr. [REDACTED] would be earning below the poverty level. According to the most recent tax documents in the record, in 2011, the applicant worked two jobs, earning a total of \$33,051 in wages while Mr. [REDACTED] earned \$5,959 in business income. Considering the unique circumstances of this case cumulatively, the AAO finds that the hardship the applicant's husband would experience if he remains in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if Mr. [REDACTED] returned to Ethiopia, where he was born, to be with his wife, he would experience extreme hardship. As stated above, the applicant was granted withholding of removal to Ethiopia. The record contains documentation addressing country conditions in Ethiopia and the AAO takes administrative notice that the U.S. Department of State urges U.S. citizens to remain vigilant and cautious in Ethiopia considering domestic insurgent groups, extremists from Somalia, and the heavy military presence along the border with Eritrea. *U.S. Department of State, Country Specific Information*, dated March 25, 2014. Moreover, documentation in the record shows that relocating to Ethiopia would entail leaving his employment of over seven years as a taxi driver and leaving the church in which he has been actively involved for over ten years. Considering all of these factors cumulatively, the AAO finds that the hardship Mr. [REDACTED] would experience if he returned to Ethiopia to be with his wife is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case include the applicant's misrepresentation of a material fact to procure an immigration benefit and periods of unauthorized presence. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including her U.S. citizen husband; the extreme hardship to the applicant's husband if she were refused admission; numerous letter of support describing the applicant as a kind and caring person who is hard working and of good moral character; letters from the couple's church describing the applicant as an indispensable church member who has regularly volunteered and participated in Sunday services for more than the last seven years; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of 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.