



U.S. Citizenship  
and Immigration  
Services

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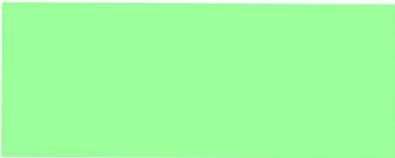
Date: **AUG 07 2014** Office: NEW YORK

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. 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, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of The Gambia, was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for procuring an immigration benefit, entry into the United States, by using a fraudulent passport. 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 his wife in the United States.

The District Director concluded that the applicant failed to establish that he was lawfully admitted, inspected or paroled into the United States because his entry document was fraudulent. The District Director indicated that a waiver could not overcome his grounds of denial of his application to adjust status. The District Director also concluded that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Director*, dated January 21, 2014.

On appeal, the applicant's attorney indicates that the applicant entered the United States on June 12, 2000 with another person's passport. The applicant's attorney also asserts that the qualifying spouse would suffer extreme hardship if the applicant returned to The Gambia without her, or if the qualifying spouse relocated to The Gambia with the applicant.

The record includes, but is not limited to; a Form I-290B, Notice of Appeal or Motion; an appeal brief; financial documentation; a letter from the qualifying spouse's prior employer; a lease; a statement from the qualifying spouse; identification documentation for the applicant and the qualifying spouse; and documentation submitted with the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) and Form I-130, Petition for Alien Relative. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

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 "Secretary"] may, in the discretion of the [Secretary], 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.

The record shows that the applicant was admitted into the United States at [REDACTED] airport in New York on June 12, 2000, as a nonimmigrant visitor using another person's passport.<sup>1</sup> He is inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting material facts to procure an immigration benefit. The applicant does not contest the finding of inadmissibility.

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

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<sup>1</sup> Although the Director states in the Form I-601 denial decision that the applicant did not establish that he was lawfully admitted into the United States, she states in her denial of his Form I-485 application that he was "lawfully present in the United States as a B-1 nonimmigrant." The Form I-485 denial was based solely on the applicant's inadmissibility for material misrepresentation or fraud. Moreover, the record indicates that the applicant was admitted after being inspected, albeit using a passport that was not his. His admission therefore was procedurally regular. See *In re Quilantan*, 25 I&N Dec. 285 (BIA 2010) (an applicant for adjustment of status need show only procedural regularity to show that he or she was admitted to the United States pursuant to section 101(a)(13)(A) of the Act).

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 applicant’s attorney states that the qualifying spouse will suffer financial hardship should the applicant return to The Gambia due to his inadmissibility. He asserts that the applicant financially supports the family after the applicant’s wife lost her job in “recent times,” and that if the applicant returned to The Gambia, it would financially burden his wife. In addition, the applicant’s spouse claims that she stopped working as a bank teller in July 2012. The record includes a letter from the applicant’s spouse’s previous employer, who states that she worked at the bank for three and a half years and was working for the bank as of July 14, 2012. The record does not contain other objective documentation, such as tax returns filed after 2011, to show that she is not currently working or to demonstrate that she has no income. While the assertions of the qualifying spouse and the applicant’s attorney are relevant evidence and have been considered, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, 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.” *See Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986). We acknowledge that the qualifying spouse’s potential loss of financial support from the applicant represents a hardship; however, the applicant has not provided sufficient evidence to show the nature and extent of the qualifying spouse’s financial hardship. The applicant provides no evidence of other types of hardship that the qualifying spouse may experience upon their separation.

Concerning the hardship that the applicant’s wife would experience if she were to relocate to be with the applicant in The Gambia, the applicant’s spouse states in her letter, dated October 9, 2012, that

she has never lived outside of the United States, has no ties to The Gambia, and her family ties are in the United States. However, the record is silent regarding the specifics of the qualifying spouse's family ties and the nature of her relationship with her family members. Further, the record indicates that the applicant has some family ties to The Gambia, including a daughter, but he does not discuss the extent to which his family may be able to provide support upon their relocation. Moreover, while the applicant's attorney asserts that "the health conditions, standard of living and life expectancy in Gambia is much worse than in [the United States]," the record does not contain supporting evidence to corroborate these claims. Although the applicant's attorney indicates that he submitted country-conditions reports, these documents are not in the record. Without evidence to corroborate his assertions and to explain the impact of these conditions on the applicant's spouse, we are not in a position to conclude that she would be adversely affected in the event that she relocates. Finally, the applicant's attorney contends that it would be "extremely difficult" for the applicant to find work in The Gambia comparable to his position and salary in the United States, and this would burden his wife. However, the applicant does not provide evidence to corroborate claims regarding the availability of suitable employment in The Gambia. As stated above, while the assertions of counsel are relevant and have been considered, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici* at 165. We acknowledge that the qualifying spouse's potential difficulties in The Gambia represent a hardship; however, the applicant has not provided sufficient evidence to show that her cumulative hardships upon relocation would be extreme.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of 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.