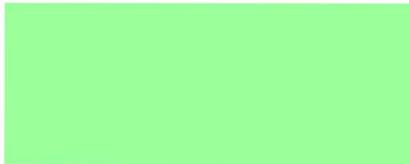


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: DEC 08 2014 Office: NEW YORK

FILE: [REDACTED]
[REDACTED]
consolidated therein)

IN RE: Applicant: [REDACTED]

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:

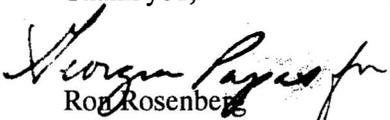


INSTRUCTIONS:

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,


Rog Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before us on a motion. The motion will be granted and the prior decision is affirmed.

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 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), 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, we determined that the applicant had shown that he was admitted to the United States with a fraudulent passport but had not established that his spouse would suffer extreme hardship if the waiver application is denied. We dismissed the appeal. See *Decision of the AAO*, dated August 7, 2014.

On motion, the applicant asserts that the qualifying spouse will be adversely affected by conditions in The Gambia and submits documents to support his claim.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). As the applicant provides new facts and evidence regarding his qualifying spouse's hardship, the motion to reopen is granted.

In addition to documents the applicant submits in support of the instant motion, the record also includes, but is not limited to: an appeal brief; financial documentation; a letter from the qualifying spouse's prior employer; a lease; a statement from the qualifying spouse; and identification documentation for the applicant and the qualifying spouse. 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 John F. Kennedy Airport in New York on June 12, 2000, as a nonimmigrant visitor using another person's passport. 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 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.

On appeal we noted that the record lacked sufficient documentation regarding the qualifying spouse’s financial hardship, should the applicant return to The Gambia due to his inadmissibility. We specifically noted that the applicant failed to provide objective evidence, such as tax returns filed after 2011, to show that the qualifying spouse is not currently working or to demonstrate that she has no income, as asserted by the applicant’s attorney. No new evidence was provided with the instant motion concerning financial hardship to the applicant’s qualifying spouse. While the qualifying spouse’s potential loss of financial support from the applicant represents a hardship, we find that the applicant has not provided sufficient evidence to show the nature and extent of this hardship.

Moreover, as stated previously, the record does not include information or evidence regarding other types of hardships the applicant’s qualifying spouse would experience if she remains in the United States, and the applicant provides no new evidence regarding this issue on motion. Therefore, based on the record before us, we are unable to find that separation from the applicant would result in extreme hardship to the qualifying spouse.

Concerning the hardship that the applicant’s wife would experience if she were to relocate to be with the applicant in The Gambia, in our previous decision we acknowledged that her potential

difficulties in The Gambia represent a hardship, but we also noted that the applicant did not provide sufficient evidence to show that her cumulative hardships upon relocation would be extreme. On motion the applicant's attorney asserts that no documentary evidence can be submitted other than what already was submitted- a letter from the qualifying spouse. We stated in our previous decision that the record is silent regarding the specifics of the qualifying spouse's family ties and the nature of her relationship with her family members. Counsel does not explain why such evidence is unavailable. Further, we previously noted that the record indicates that the applicant has family ties to The Gambia, including a daughter, but he did not address whether his family would be able to provide support upon their relocation. No new evidence accompanying the instant motion addresses these matters.

On motion, the applicant submits country reports to show the "adverse effects" conditions in The Gambia may have on his spouse. However, the applicant does not specifically indicate how his qualifying spouse would be affected by conditions in The Gambia, as described in the reports. The new evidence consists of two pages from Amnesty International's 2012 Annual Report, one of which is illegible; and a copy of the Department of State's Country Report on Human Rights Practices for 2013. Both reports discuss recent political and human-rights issues in The Gambia. In addition, the applicant submits three pages of statistical information from a World Health Organization website regarding The Gambia, including two pages of health-profile charts. Taking this new evidence into consideration, it is unclear how the conditions they describe will specifically adversely affect the qualifying spouse. We acknowledge that the qualifying spouse may face difficulties in The Gambia and such difficulties represent a hardship; however, the applicant has not provided sufficient evidence describing her specific hardships or demonstrating 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 motion is granted and the underlying application remains denied.