

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**



(b)(6)

DATE: DEC 10 2014

Office: ST. PAUL, MN

FILE: [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:

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 waiver application was denied by the Field Office Director, St. Paul, Minnesota, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record establishes that the applicant is a native and citizen of Liberia who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of 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, the applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children.

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 Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated June 10, 2014.

In support of the appeal counsel for the applicant submits the following: a brief, affidavits from the applicant and his spouse, information about country conditions in Liberia, and medical and financial documentation pertaining to the applicant and his family. 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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 . . .

The record establishes that the applicant misrepresented his identity when he applied for, and ultimately obtained, refugee status and lawful permanent residence in the United States, and when he

applied for naturalization. Specifically, the record establishes that the applicant filed the Form I-590, Registration for Classification as a Refugee, in February 2001, listing his name as [REDACTED] and his mother as [REDACTED], an applicant for refugee status. The applicant subsequently entered the United States as an RE-3, child of a refugee, and obtained lawful permanent residence as the child of a refugee, listing his name on all immigration applications as [REDACTED] and his mother's name as [REDACTED]. Furthermore, in August 2008, the applicant applied for naturalization and listed his name as [REDACTED]. The applicant did not provide his purported true identity until he was interviewed in connection with his naturalization application in August 2008.

On appeal, counsel maintains that the applicant's only unfavorable consideration is that he entered the United States with a false document under a false name when he was a minor and had no control over the actions of his guardian. The record establishes that the applicant misrepresented himself on multiple occasions, as outlined in detail above. Entering the United States with a false identity was just one of the occasions when the applicant misrepresented his identity to obtain an immigration benefit. Furthermore, despite counsel's assertions, the applicant was in his early 20s when he made his first misrepresentation to obtain immigration benefits, specifically, a visa and entry to the United States as a child of a refugee. He applied for permanent residency with a false identity in December 2002, when he was approximately 22 years old. He applied for naturalization utilizing his false identity in August 2008, when he was approximately 28 years old. The applicant is, therefore, 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, subsequent entry to the United States, lawful permanent residence, and ancillary immigration benefits, by 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 his five U.S. citizen children, two with his current U.S. citizen spouse, 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-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. *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 she will suffer emotional and financial hardship were she to remain in the United States while the applicant relocates abroad due to his inadmissibility. In a declaration the applicant's spouse contends that the applicant is her better half and makes the

family whole and without his daily presence and support, she would experience emotional hardship. Furthermore, the applicant's spouse maintains that her two children, born in 2009 and 2010, are very attached to their father and long-term separation from him would cause them, and by extension her, extreme hardship. She asserts that her young daughter was recently sexually assaulted by a family member and as a result of the emotional toll of that occurrence she needs the applicant by her side even more to help care for her and her children. The applicant's spouse also contends that although she is employed, she relies on her husband's income to make ends meet. Were the applicant to relocate abroad, the applicant's spouse asserts that she would experience financial hardship as she would have to pay for costly child care for her children, while maintaining the household on her own, and she would not have any money left over to visit her husband abroad.

Medical documentation has been provided establishing the assault against the applicant's daughter in February 2013, when she was two years old. In addition, the applicant has submitted documentation outlining the applicant's financial contributions to the household and the financial obligations of the applicant and his spouse, including many which are past due. Finally, a travel warning has been issued for Liberia, warning U.S. citizens against non-essential travel to Liberia. The record reflects that the cumulative effect of the emotional and financial hardship the applicant's spouse will experience were the applicant to relocate abroad as a result of his inadmissibility rises to the level of extreme. A prolonged separation at this time would cause hardship beyond that normally expected of one facing the removal of a spouse.

Extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. The applicant's U.S. citizen spouse explains that she has been residing in the United States since she was 18 years old, more than 16 years, and long-term separation from her children, her community and her gainful employment would cause her hardship. The applicant's spouse further maintains that she was granted asylum in the United States because of the killings and atrocities that were done by rebels in Liberia. She asserts that she would be fearful for her safety and well-being in Liberia. In a separate statement the applicant references the Ebola outbreak in Liberia and his concern for his and his family's health were they to relocate to Liberia. Based on the applicant's spouse's extensive and long-term ties to the United States and the problematic country conditions in Liberia, the applicant has established that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, we find 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 he 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-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). We 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 Nigeria, regardless of whether they accompanied the applicant or stayed in the United States; community ties; the applicant's long-term gainful employment as a care giver; the apparent lack of a criminal record; and church involvement. The unfavorable factors in this matter are the applicant's fraud or willful misrepresentation as outlined in detail above and periods of unlawful presence and employment while in the United States.

The violations committed by the applicant are serious in nature. Nonetheless, we find that the applicant has established that the favorable factors in his 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.