



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[REDACTED]

Date: **FEB 20 2014** Office: COLUMBUS, OHIO [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. 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 Field Office Director, Columbus, Ohio. An appeal to the Administrative Appeals Office (AAO) was dismissed. The AAO subsequently rejected a motion to reopen and reconsider as being untimely filed. The matter is again before the AAO on a motion to reconsider. The motion will be granted, and the prior AAO decision to dismiss the appeal is affirmed.

The applicant is a native and citizen of Somalia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside in the United States with his U.S. citizen spouse.

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 (Form I-601), accordingly. *Decision of the Field Office Director*, dated January 25, 2011.

The AAO, reviewing the applicant's Form I-601 on appeal, found that, although the applicant established that his qualifying relative would experience extreme hardship if she were to relocate to Somali to reside with him, the applicant failed to establish that his qualifying relative would experience extreme hardship were she to remain in the United States. As the AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both the scenario of relocation and the scenario of separation, the AAO found that the applicant failed to establish that his removal would result in extreme hardship to his spouse and dismissed the appeal accordingly. *Decision of the AAO*, dated January 6, 2012.

The applicant, through counsel, filed a motion to reopen and reconsider, which was received on February 10, 2012, and rejected as untimely. *Decision of the AAO*, dated January 16, 2013. He subsequently filed a motion to reconsider on February 19, 2013, received by the AAO on October 22, 2013, requesting reconsideration of the AAO's decision to reject the applicant's initial motion.

Counsel states that the applicant's failure to submit a timely motion to reopen and reconsider was the result of an error by counsel's paralegal, who mistakenly sent the Form I-290B, Notice of Appeal or Motion (I-290B), directly to the AAO, despite clear instructions to submit the Form I-290B to the office that originally decided the applicant's case. Counsel submits an affidavit from his paralegal, who takes responsibility for the error. Counsel contends that the AAO should accept the applicant's initial Form I-290B under 8 C.F.R. § 245.1(d)(2)(i), which defines the term "no fault of the applicant or for technical reasons," because the applicant was not responsible for his untimely Form I-290B.

The regulation at 8 C.F.R. § 245.1(d)(2)(i) defines the phrase "no fault of the applicant," which appears in section 245(c)(2) of the Act concerning applicants for adjustment of status who fail to maintain lawful status, as "[i]naction of another individual or organization designated by regulation to act on behalf of an individual and over whose actions the individual has no control, if the inaction is acknowledged by that individual or organization."

Counsel cites two unpublished federal court decisions, which hold that limiting the application of the phrase “no fault of the applicant or for technical reasons” to the four categories specified in the regulation is impermissibly narrow. Counsel also asserts that the AAO should reconsider its decision to reject the initial Form I-290B as untimely based on another AAO decision; in that decision the AAO found the applicant’s failure to timely file a motion due to his reliance on inaccurate information from the legal organization assisting him reasonable and beyond his control.

Any failure on the part of applicant’s counsel or of counsel’s paralegal to properly submit a timely appeal cannot be excused by the regulation at 8 C.F.R. § 245.1(d)(2)(i), because the applicant is not addressing his failure to maintain lawful status in an application for adjustment of status. Moreover, assuming this regulation could apply to his circumstances, counsel has not shown that he or his paralegal is designated by regulation to act on the applicant’s behalf. In addition, although the record includes an affidavit from the paralegal taking responsibility for the error, the applicant makes no claim of ineffective assistance of counsel. Furthermore, only AAO decisions that are published and designated as precedents in accordance with the requirements discussed in 8 C.F.R. § 103.3(c) are binding on U.S. Citizenship and Immigration Services (USCIS) officers. The decision submitted by counsel is unpublished and not designated as a precedent decision. It therefore has no binding precedential value for purposes of the applicant’s case.

The applicant’s initial Form I-290B was untimely filed. According to 8 C.F.R. § 103.5(a)(1)(i), a failure to file a motion within the prescribed period of time “may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.” A delay caused by a paralegal’s error is not one that may be considered reasonable and beyond the control of the applicant, as envisioned by the regulation at 8 C.F.R. § 103.5(a)(1)(i), that would excuse a late filing. However, the AAO will exercise favorable discretion and adjudicate the motion’s substantive merits despite the late filing.

According to 8 C.F.R. § 103.5(a)(3), 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 that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). As the applicant has stated reasons for reconsideration supported by precedent decisions, the motion to reconsider will be granted.

The record includes, but is not limited to: briefs by applicant’s counsel; financial documentation; medical documentation; and country-conditions information about Somalia. The entire record was reviewed and considered in rendering a decision on the motion.

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.

The record indicates that the applicant attempted to enter the United States on June 20, 1999, by misrepresenting himself to be a citizen of the Netherlands named [REDACTED], with a Dutch passport, stating he planned to vacation in the United States. Upon further examination at the port of entry, the applicant admitted that he was an imposter and requested asylum. The applicant was charged with willful misrepresentation of a material fact and placed into immigration proceedings. According to the immigration judge's decision dated December 18, 2000, the applicant testified that he had paid a smuggler \$3,500 to come to the United States with fraudulent documents. The immigration judge found the applicant not credible about several material facts, including his identity, denied his asylum claim and ordered him removed. The Board of Immigration Appeals dismissed the applicant's appeal in April 2003 and also dismissed two motions, the last one in 2007. The applicant does not contest his inadmissibility.<sup>1</sup>

Section 212(i) of the Act provides that:

The Attorney General [now the 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 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 [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.

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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. 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

---

<sup>1</sup> As noted in the AAO's January 6, 2012 decision dismissing the applicant's appeal, the record also shows that the applicant was convicted of providing false identity to a police officer, Ohio Revised Code, section 4513-361 on April 19, 2004. Additionally, the record shows that the applicant was convicted of several traffic offenses, including speeding, driving without an operator's license, reckless operation of a motor vehicle, and a tag violation. The Field Office Director did not address whether the applicant had been convicted of a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Similarly, the AAO will not determine whether the applicant's crimes involve moral turpitude and whether he is therefore inadmissible under section 212(a)(2)(A)(i)(I) of the Act, as a waiver under section 212(i) of the Act would entitle him to a waiver under section 212(h) of the Act.

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. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1993), (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9<sup>th</sup> 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 AAO determined, in its decision of January 6, 2012, that the applicant established that his spouse, a native of Somalia and a U.S. citizen who was resettled in the United States as a refugee, would suffer extreme hardship if she were to relocate to Somalia to be with the applicant. The AAO, however,

dismissed the appeal because the applicant failed to establish that his spouse would experience extreme hardship were she to remain in the United States. As the AAO has already determined that the applicant's qualifying relative will experience extreme hardship upon relocation, the AAO will examine only the hardship she would experience due to separation in this decision.

The applicant's spouse claims that she will suffer financial hardship if the waiver application is not approved and she is separated from the applicant. The record establishes that the applicant owns Peace Transportation Corporation. The applicant's spouse states that she is employed as a secretary with the applicant's company, that she has no training to run the company, and that without the applicant, the company would collapse.

The record includes copies of federal income tax returns filed by the applicant's spouse in 2005 and 2009. Although the applicant and his spouse were married in 2004, both income tax returns indicate that the applicant's spouse filed as head of their household.<sup>2</sup> On her 2005 income tax return, the applicant's spouse claimed two daughters as dependents and an income of \$24,843, listing her occupation as student. On her 2009 income tax return, she did not list as dependents her two daughters but listed two foster children and an adjusted gross income of \$11,989. An undated letter indicates that in May 2010, the applicant's spouse began working full-time at the applicant's company and earns \$1000 every two weeks.

The record fails to provide evidence of the complete financial situation of the applicant and his spouse, such as proof of their assets and liabilities. There is no indication in the record that the applicant's spouse continues to financially support her daughters. Moreover, according to her 2009 return, the applicant's spouse has two foster children, indicating she was found to have the financial means to care for them.<sup>3</sup> There is insufficient evidence in the record to establish that the applicant's spouse would experience financial hardship in the applicant's absence.

Counsel contends that the applicant's spouse would suffer medical hardship without the applicant, as they are trying to conceive. Although the AAO is sympathetic to the family's circumstances, the record does not reflect a medical condition of the applicant's qualifying relative that could be considered hardship, as contemplated by statute and case law.

The applicant's spouse asserts that she is suffering from psychological hardship and, due to ongoing violence in Somalia, she fears for the applicant's safety. She also states that she tried to make an appointment with a counselor to help her cope with the possibility of not having a family of her own. Counsel, in a brief submitted in February 2012, states that the applicant's spouse was unable to find a qualified professional to provide a psychological evaluation with the 30-day period allowed for a motion to reconsider. As of the date of this decision, the record contains no supporting evidence concerning the applicant's spouse's emotional hardship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these

---

<sup>2</sup> While the record includes a copy of a federal income tax return the applicant filed in 2005, it lacks copies of more recent tax returns.

<sup>3</sup> The State of Ohio requires foster caregivers to have an income sufficient to meet the basic needs of the household and to make timely payment of shelter costs, utility bills, and other debts. See Ohio Administrative Code, section 5101:2-7-02(D).

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)).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

Although the applicant has demonstrated that his spouse would experience extreme hardship if she relocated abroad to reside with him, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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 prior AAO decision to dismiss the appeal is affirmed.