



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: JAN 29 2014

OFFICE: BOSTON

[Redacted]

IN RE:

[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 Field Office Director, Boston, Massachusetts denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant 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 procuring an immigration benefit by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and stepchildren.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative upon separation, but acknowledged the difficulty in the relocation of the applicant's spouse and her children to Uganda. The Field Office Director denied the application accordingly. *See Decision of the Field Office Director*, dated July 18, 2013.

On appeal, counsel for the applicant asserts that the applicant's spouse would face personal, emotional, financial, and health-related hardship if the applicant's waiver application is denied. Counsel further asserts that the applicant's spouse would suffer from extremely adverse country conditions upon relocation. Counsel contends that the applicant merits a favorable exercise of discretion in his waiver application.

In support of the waiver application and appeal, the applicant submitted a declaration, a declaration from the applicant's spouse, identity documents, letters of support, family photographs, financial documentation, legal documentation, and background country condition information concerning Uganda. 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.

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (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 Attorney General (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...

The applicant applied for a B1/B2 visa on August 11, 2009, indicating that he was married. The applicant married his current spouse on March 15, 2011 in [REDACTED]. During an interview on September 21, 2012, the applicant stated that he had never been previously married. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring a visa and admission to the United States through fraud or misrepresentation. The applicant does not dispute this ground of inadmissibility on appeal.

A waiver of inadmissibility under sections 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 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-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*, 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 record reflects that the applicant is a 31-year-old native and citizen of Uganda. The applicant’s spouse is a 36-year-old native and citizen of the United States. The applicant is currently residing with his spouse and stepchildren in [REDACTED]

The applicant’s spouse asserts that she relies upon the applicant for help in raising her children and providing financial support. The applicant’s spouse contends that her family currently has a difficult time paying their bills, which would worsen upon the absence of the applicant. The applicant’s spouse further contends that the applicant helps her manage, care for, and cook for her children, tasks for which she no longer relies upon family assistance. The applicant asserts that his spouse is the primary financial provider, but he supplements the household income with work at a nearby gas station.

The record contains a [REDACTED] bill addressed to the applicant’s spouse. The record also contains a 2011 tax return for the applicant’s spouse. The record does not contain any other financial documentation for the applicant or the applicant’s spouse. The record is insufficient to determine that the applicant’s spouse would be unable to meet her household financial obligations in the absence of the applicant. There is also no indication that in the absence of the applicant, the applicant’s spouse’s family would be unable to resume their assistance with the

applicant's spouse's childcare, as previously provided. Further, the record is insufficient to determine that the applicant's spouse would be unable to afford childcare if necessary. 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)).

The applicant's spouse asserts that the applicant is her partner and that she and the applicant have become very close since their marriage two years ago. The applicant's spouse also asserts that her son would be crushed if separated from the applicant, a male role model in his life, and she would worry about the applicant's safety in Uganda. The applicant's spouse contends that she struggled with depression prior to meeting the applicant, but has managed to keep her emotional state under control. The applicant's spouse further asserts that she would miss the applicant upon separation and fears that her depression would worsen and affect her employment and ability to care for her children. It is noted that the record does not contain supporting documentation concerning any conditions of the applicant's spouse. It is also noted that the applicant's spouse's children are not qualifying relatives in the context of this application so that any hardship they would experience will be considered only insofar as it affects the applicant's spouse.

It is also acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would suffer emotional hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer extreme hardship upon separation from the applicant.

The applicant's spouse asserts that she cannot relocate to Uganda to reside with the applicant because she has never traveled outside the United States and cannot imagine living in another country. The record reflects that the applicant's spouse is a native and citizen of the United States. The applicant's spouse contends that she would have to leave her employment and family members in the United States if she relocated to Uganda. The applicant's spouse also asserts that she expects to share in the responsibility of caring for her elderly parents as they reach retirement age. The record reflects that the applicant's spouse has been employed as an environmental service aid at [REDACTED] since June 2006. The record also indicates that the applicant's spouse's parents reside in [REDACTED].

The applicant's spouse asserts that even if she wanted to relocate to Uganda, she could not because she would be forced to leave behind her daughter. The applicant's spouse contends that her daughter's biological father shares legal and physical custody of their daughter and would not allow her to leave the country permanently. The record contains a court stipulation stating that the applicant's spouse shares an equal amount of legal and physical custody, including time in the home of each parent, with her daughter's biological father.

The applicant's spouse asserts that she would fear the violence and poverty of Uganda and is concerned that women are treated poorly in that country. The Department of State has not issued a current travel warning concerning Uganda, but states, in its Country Specific Information dated

July 3, 2013 that the potential for terrorist activity from extremist organizations is high. In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if she relocated to Uganda.

In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if she relocated to Uganda. The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. 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.

The AAO therefore finds 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 balancing positive and negative factors to determine whether the applicant merits this 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.