

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **JUL 10 2014** Office: KANSAS CITY, MISSOURI

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:
[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,

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, Kansas City, Missouri. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Kenya who was found to be 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 attempted to procure an immigration benefit through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition of Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his U.S. citizen spouse.

The Field Office Director found that the applicant failed to establish that favorable discretion is warranted in his case and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601). *See Decision of the Field Office Director*, dated August 13, 2013.

On appeal, counsel asserts that the applicant's spouse would suffer exceptional and extremely unusual hardship due to her health problems were she to stay in the United States without the applicant or relocate with him to Kenya. In addition, counsel states that the Field Office Director's decision was based on incomplete facts that were difficult to comprehend. Counsel also asserts that the applicant's new evidence of hardship to his spouse should be considered on appeal.

The record includes but is not limited to: two Forms I-601; a Form I-290B, Notice of Appeal or Motion; briefs written on behalf of the applicant; copies of the cases counsel cites in his appeal brief; two reports regarding HIV statistics in Kenya; two affidavits from the qualifying spouse; medical information regarding the qualifying spouse; financial documentation; three Forms I-485, Applications to Register Permanent Residence or Adjust Status; three Forms I-130, Petitions for Alien Relative (Form I-130), with supporting evidence; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 reflects that the applicant submitted fraudulent Kenyan divorce decrees with his first two Forms I-130. On his most recent Form I-601, the applicant admits providing these fraudulent divorce decrees but maintains that he did not know they were fakes when he submitted them. The applicant states that his submission of fraudulent documents was "inadvertent," because his relatives in Kenya, who he compensated, sent him the documents. Counsel attributes the false documents to the "lawless and corrupt system in Kenya" and also indicates that the applicant was unaware that such documents were invalid. It appears, therefore, that the applicant contests the inadmissibility finding by asserting he did not submit these false documents willfully.

“It is not necessary that an ‘intent to deceive’ be established by proof, or that the officer believes and acts upon the false representation,” but the principal elements of the willfulness and materiality of the stated misrepresentations must be established. 9 FAM 40.63 N3 (citing *Matter of S and B-C*, 9 I&N Dec. 436, 448-449 (A.G. 1961) and *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975)).

Concerning the willfulness of the applicant’s misrepresentations, 9 FAM 40.63 N5, in pertinent part, states that:

The term “willfully” as used in INA 212(a)(6)(C)(i) is interpreted to mean knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately made an untrue statement.

We are unable to find that the applicant is inadmissible for making a willful misrepresentation of a material fact without “clear, unequivocal, and convincing evidence.” See *Kungys v. United States*, 485 U.S. 759, 771-72 (1988).

Pursuant to section 291 of the Act, the applicant bears the burden of demonstrating by a preponderance of the evidence that he is not inadmissible. See also *Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978). Where the evidence for and against admissibility “is of equal probative weight,” the applicant cannot meet his burden of proof. *Matter of Rivero-Diaz*, 12 I&N Dec. 475, 476 (BIA 1967) (citing *Matter of M--*, 3 I&N Dec. 777, 781 (BIA 1949)).

The applicant claims that he asked his relatives in Kenya to send him his divorce decree, which he then submitted to U.S. Citizenship and Immigration Services (USCIS) without knowing it was fraudulent. He indicates that he was told that the decree was not proper. He states that he then called his relatives to request a “proper decree,” and they again sent him an “improper decree,” which he provided to USCIS, not knowing it too was fraudulent. The record includes no other details or evidence regarding who sent him the false decrees from Kenya, how these documents were sent to him or any other evidence supporting his assertions that he had no knowledge that the divorce decrees he submitted were invalid. Moreover, the evidence does not indicate that the applicant lacks capacity to understand the requirement of providing authentic supporting documents with his immigration applications or that he was unable, given his age and education level, to exercise proper judgment in that regard, particularly after becoming aware that the first document he submitted was fraudulent.

Although the applicant’s assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). 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 record indicates that the applicant intentionally provided fraudulent divorce decrees in order to obtain an immigration benefit. The circumstances within which the applicant provided such false documents suggest that he made a material misrepresentation regarding his divorce. The evidence the applicant submits to prove

that he had no knowledge of their falsity is insufficient. The record establishes that the applicant is inadmissible under Section 212(a)(6)(C) of the Act.

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

- (1) The [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.¹ 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-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

¹ Counsel refers to both extreme hardship and exceptional and extremely unusual hardship in his brief. The correct requirement for determining whether a waiver of inadmissibility is warranted in this matter is extreme hardship.

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.

The qualifying spouse indicates that she would experience emotional, medical, and financial hardships if she were to be separated from the applicant. She indicates that she would be “more depressed than ever” if the applicant were to return to Kenya. While it is understandable that the applicant’s spouse would experience some emotional difficulties if she remains in the United States without the applicant, the record provides little detail regarding the specific emotional hardships that she would experience upon separation. Moreover, this evidence fails to specifically address how the qualifying spouse’s emotional hardships rise beyond the ordinary hardships associated with separation.

Concerning hardships related to her health, the applicant’s qualifying spouse indicates that she is HIV positive, her situation will get worse as she ages, and she will eventually be unable to survive without the applicant’s financial support. The record contains two affidavits from the applicant’s spouse indicating that she is HIV positive. In addition, the applicant submits a list of medications that his spouse is taking, prepared after a September 2012 visit to her doctor; an appointment itinerary for a visit to her gynecologist that includes a list of completed procedures or tests that were written with acronyms and “patient education materials” about dysfunctional uterine bleeding; a [REDACTED] billing information form indicating that she is enrolled in the [REDACTED], and a [REDACTED] services confidentiality policy and informed consent form that she signed in 2011.

The evidence corroborates the applicant’s spouse’s claim that she is HIV positive. However, the applicant has not submitted evidence of the severity of his spouse’s condition and her current medical

situation. Moreover, some of the medical evidence is unclear because it includes undefined acronyms. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, we are not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

Furthermore, with regard to her assertions of financial hardship, the record does not establish that the qualifying spouse financially relies on the applicant. The record contains tax returns and W-2s for both of her jobs and contains only one tax-return transcript for the applicant from 2010, indicating that he earned approximately less than half of the qualifying spouse's salary. Further, while the record contains various bills and other evidence of some of the financial responsibilities of the applicant and qualifying spouse, these documents do not establish that the applicant's spouse would be unable to afford these expenses on only her income.

With respect to the hardship she would experience if she relocated to Kenya to live with the applicant, the applicant's spouse states that her sister and niece live in the United States and that she is close with them. However, no evidence was provided to corroborate her relationship with them. The applicant, moreover, submits no evidence about their family members currently living in Kenya.

The qualifying spouse also asserts that if she returns to Kenya, she would be "risking [her] life by moving to a place which has no medical ability to treat" her. The applicant provides two fact sheets: one with information relating to the number of people living in Kenya with HIV and their age ranges, as well as the annual number of deaths resulting from AIDS, and the other indicating the demographic and socioeconomic data and other HIV indicators regarding affected populations. However, the record lacks detail about the treatment that she currently receives for her medical conditions, and the country-specific reports the applicant provides do not indicate that appropriate treatment is unavailable to her in Kenya. As stated above, the exact nature and severity of her condition also has not been established through the record.

The qualifying spouse also fears that she will face economic hardships in Kenya because she will have to quit her job and is not guaranteed employment at a comparable level. The applicant provides no objective evidence regarding employment opportunities in Kenya to corroborate his spouse's claim. Assertions are evidence and will be considered. However, going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)). Similarly, the applicant indicates that she will not feel safe in Kenya due to various travel advisories. However, the applicant's approved Form I-130 shows that the qualifying spouse is from Nakuru, Kenya, which currently has no travel restrictions. *See* U.S. Dep't of State, *Kenya Travel Warning* (June 19, 2014), <http://travel.state.gov/content/passports/english/alertswarnings/kenya-travel-warning.html>.

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. The applicant has not established 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.²

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.

² Though it does not affect the outcome in this matter, the Field Office Director, in her decision dated August 13, 2013, erred by finding the applicant ineligible for a waiver under 212(i) of the Act solely based on her discretion without first conducting an extreme-hardship analysis.