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



U.S. Citizenship
and Immigration
Services

DATE: **JUN 02 2014**

OFFICE: NEBRASKA SERVICE CENTER

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:

SELF-REPRESENTED

INSTRUCTIONS:

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, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Nebraska Service Center Director, Lincoln, Nebraska denied the waiver application and 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 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant is the son of a U.S. citizen mother and the beneficiary of an approved Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The director concluded that the applicant failed to submit evidence sufficient to establish that extreme hardship would be imposed on a qualifying relative, and that the Application for Waiver of Grounds of Inadmissibility (Form I-601), was improperly filed. *See Decision of the Director*, dated September 25, 2013. The director denied the Form I-601 accordingly.

On appeal, the applicant contests inadmissibility and contends that his U.S. citizen mother will experience extreme hardship if a waiver is not granted. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received October 29, 2013.

The record contains, but is not limited to: Form I-290B and various immigration applications and petitions; an affidavit from the applicant; a statement on a Form I-601 from the applicant's mother; a letter from USCIS acknowledging an administrative error; birth, marriage and divorce certificates; copies of the applicant's mother's permanent resident card, naturalization certificate and U.S. passport; a letter to the applicant and his siblings from the U.S. Embassy in Nairobi; visa applications and related documents; a notice of intent to deny, rebuttal letter and DNA maternity analysis and report; a request for evidence letter and response; a copy of the applicant's passport and two school certificates; a registered nurse's letter; a letter of character reference and support; and income tax, property ownership and mortgage documents. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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 applicant contests inadmissibility, contending that he was found inadmissible due to a date of birth typographical error on his mother's permanent resident card which was later acknowledged in a letter by USCIS as an administrative error. The record shows that the USCIS error was subsequently corrected on the applicant's mother's naturalization certificate and U.S. passport. This USCIS error, however, is unrelated to the material misrepresentation for which the applicant was found inadmissible under section 212(6)(C)(i) of the Act.

The record shows that the applicant submitted a nonimmigrant E-1 visa application, dated May 8, 2004. Thereon, the applicant lists his name as "[REDACTED]" and indicates that he has not used any other first, middle or surname(s). On the same application, the applicant lists his date of birth as July 12, 1984. However, the record shows that he was also known by the names "[REDACTED]" on the Petition for Alien Relative (Form I-130) filed on April 2, 2001 on his behalf, and "[REDACTED]" the name appearing on his birth certificate. Additionally, a July 10, 1984 date of birth is listed on the applicant's birth certificate and the Form I-130. The applicant further asserts on his 2004 nonimmigrant visa application that his mother resides in Kenya. The record shows, however, that she was a U.S. lawful permanent resident residing in Delaware at the time. The applicant indicates on the application that he has never been refused a U.S. visa, and has never been refused admission to the United States or sought to obtain a visa, entry into the United States, or any other U.S. immigration benefit by fraud or willful misrepresentation. Conversely, the record shows that his prior immigrant visa application was refused on September 23, 2002 on grounds of misrepresentation under section 212(a)(6)(C)(i) of the Act. The applicant's misrepresentations are material because they tended to cut off a line of questioning concerning his immigrant intent (i.e., whether he intended to return to Kenya given that he had previously applied for an immigrant visa and his mother was a lawful permanent resident residing in the United States). They are also material because he would have been excludable on the true facts (i.e., had he used the same name and date of birth provided on his prior immigrant visa application, it would have been discovered that the prior visa was refused for fraud or willful misrepresentation). See *Kungys v. United States*, 485 U.S. 759 (1988), and *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961). Based on the foregoing, the director found that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The record supports this finding and we concur. The applicant requires a waiver under section 212(i) of the Act.

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. In the present case, the applicant's mother is his only 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*, 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.

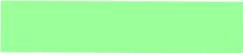
The applicant's mother is a 54-year-old native of Kenya and citizen of the United States concerning whom hardship has been asserted of an emotional, medical and economic nature. The applicant writes that his mother suffers from a chronic ailment, which may cause her to be unable

to work in the near future and put her at risk of losing the home she owns. [REDACTED] RN, confirms that the applicant's mother has a chronic medical condition that requires very close monitoring and continuous medical care with intense medical case management. Ms. [REDACTED] does not identify the specific condition or provide a prognosis relating to the applicant's mother's future ability to work. Ms. [REDACTED] states that during her three years as case manager, the applicant's mother has been fairly stable. She believes, however, that the presence of the applicant would improve his mother's mental and physical health as research has shown that with less stress in one's life and the loving support of family, health outcomes are always improved. No specific research results have been identified or submitted for the record. We recognize that the applicant's mother wishes to have the applicant by her side and that his presence may have a positive impact on her health. However, the evidence in the record does not establish the nature of her condition, the limitations related thereto, or her prognosis for the future or that the applicant would be essential to his mother's physical or emotional care. We have, however, considered these assertions in the aggregate along with all other assertions of separation-related hardship.

The applicant states that he is a commercial pilot and, if permitted to immigrate to the United States, will be able to provide for his mother and brother financially and also care for his mother's needs. The applicant explains that he is currently unemployed in Kenya and has had to rely on his mother for financial support, creating an economic hardship for her. Income tax returns for 2012 show that the applicant's mother earned \$24,390, the applicant's brother, [REDACTED] earned \$14,571 that year, and both reside in the mother's home. The record contains no corroborating documentary evidence showing that the applicant's mother currently supports the applicant or demonstrating the economic impact of any such support and no documentary evidence demonstrating the applicant's employability in the United States or his potential earnings here. 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)). A mortgage statement reflects a monthly obligation of \$816.75. The record contains no documentary evidence of the applicant's mother's expenses to support that assertion that she is suffering economic hardship as a result of separation from the applicant. We have, however, considered economic hardship assertions along with all other assertions of separation-related hardship.

We acknowledge that separation from the applicant has and will likely continue to cause various difficulties for the applicant's mother. However, we find the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

The possibility of the applicant's mother relocating to Kenya has not been addressed in the record. As the record contains no assertions of hardship related to relocation, the AAO cannot speculate in this regard. Accordingly, the AAO finds the evidence insufficient to demonstrate that the applicant's qualifying relative mother would suffer extreme hardship were she to relocate to Kenya to be with the applicant.



The applicant has, therefore, failed to demonstrate that the challenges his mother faces are unusual or beyond the common results of removal or inadmissibility such that they rise to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether he 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 appeal is dismissed.