



U.S. Citizenship
and Immigration
Services

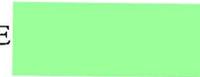
(b)(6)



DATE: JUN 20 2014

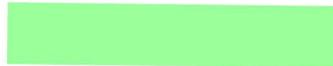
Office: NEW YORK, NY

FILE



IN RE:

Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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 Director, New York, New York, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mali who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife and step-children in the United States.

The director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant established extreme hardship to his wife, particularly considering she has two sons in high school, she has medical and psychological problems, and she is unemployed.

The record contains, but is not limited to, the following documents: a copy of the marriage certificate of the applicant and his wife indicating they were married on July 27, 2011; a statement from the applicant's wife; copies of medical records; copies of tax returns and other financial documents; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for Mali and other background materials; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, the record shows, and counsel concedes in his brief, that the applicant entered the United States with a fraudulent passport bearing the applicant's photograph but not his true and correct name. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's wife states that she and her two teenage sons have grown up in New York and are accustomed to all of the cultural things New York has to offer. According to her statement, she has high blood pressure and has been recommended to undergo gastric surgery to help her lose weight to reduce her blood pressure. She states she has health insurance in the United States and fears not having medical insurance or quality medical care in Mali. In addition, she states she is currently unemployed and that without her husband, she cannot afford to support her family. She states she cannot move to Mali to be with her husband because she is a devout Catholic, has attended the same church since she was young, and does not want to give up her relationship with her church. In addition, she states that her children would be separated from their biological father, who they see on a regular basis, that they do not speak French or Bambara, and that they would need to adapt to an entirely different culture. She also states that Mali is a dangerous and unstable country.

After a careful review of the entire record, the AAO finds that if the applicant's wife relocated to Mali to be with her husband, she would experience extreme hardship. The record contains documentation establishing that the applicant's wife's has been diagnosed with hypertension, iron deficiency anemia, and obesity. The record also shows she was hospitalized in August 2013 for a hypertensive emergency, in November 2012 for iron deficiency anemia, and in April 2012 for epigastric pain. The applicant's wife cites numerous statistics to support her contention that she would not receive adequate medical care in Mali and we acknowledge that the U.S. Department of State describes medical facilities and medicines in Mali as extremely limited or unavailable. *U.S. Department of State, Country Specific Information, Mali*, dated February 11, 2014. Furthermore, the record contains a letter from a psychologist describing the applicant's wife's difficult childhood in which she was raised by her aunt because her father was incarcerated for manslaughter and her mother was a drug addict. The psychologist states that the applicant's wife has not been treated well by men, including the two men who fathered her two sons, and that she overeats to mask her depression, causing her to be severely overweight. The psychologist diagnosed the applicant's wife with Adjustment Disorder with Mixed Anxiety and Depressed Mood as well as Dependent Personality Disorder. In addition, the record contains documentation corroborating the applicant's wife's claims that she was born in New York and that her fourteen and seventeen year old sons live with her in New York. If she relocated to Mali, the applicant's wife would need to adjust to living in Mali, a difficult situation made more complicated given her medical and mental health issues and her two adolescent sons. *Cf. Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001) (finding extreme hardship for an adolescent to relocate to China considering she lived in the United States her entire life, is completed integrated into the American lifestyle, and is not fluent in Chinese). Moreover, the U.S. Department of State has issued a Travel Warning for Mali, warning U.S. citizens of the ongoing security concerns throughout Mali. *U.S. Department of State, Travel Warning, Mali*, dated March 24, 2014. Considering these unique factors cumulatively, the record establishes that the hardship the applicant's wife would experience if she relocated to Mali to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

The AAO also finds that if the applicant's wife remains in the United States without her husband, she would suffer extreme hardship. As stated above, the record contains documentation from a psychologist diagnosing the applicant's wife with Dependent Personality Disorder. According to the psychologist, the applicant's wife saw her father approximately ten times a year when she was a child and saw her mother every other weekend. The psychologist notes that the applicant's wife's aunt was raising five children, all children of drug addicts, and was unable to give any child significant, individual attention. The psychologist states that the applicant's wife emotionally depends on her husband and her marriage is the best relationship she has ever had. In addition, tax records show that in 2012, when the applicant's wife was working, she earned \$14,711 in total income working in child care. The record therefore establishes that if the applicant's wife remains in the United States without her husband, she would be a single parent with limited or no income who also has significant medical and mental health issues. Considering the unique circumstances in this matter cumulatively, the AAO finds that the hardship the applicant's wife would experience if she remains in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case includes the applicant's misrepresentation of a material fact to procure an immigration benefit. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including his U.S. citizen wife and stepchildren; the extreme hardship to the applicant's entire family if he were refused admission; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

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.