



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JUN 27 2014

OFFICE: WASHINGTON FIELD OFFICE

FILE: [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.

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 Director, Washington Field Office, and the appeal was dismissed by the Administrative Appeals Office (AAO). The application is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the appeal sustained.

The record reflects that the applicant is a native and citizen of Ghana 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 having attempted to enter the United States through fraud or willful misrepresentation of a material fact. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse and two U.S. citizen children.

In a decision, dated August 26, 2011, the Field Office Director found that the applicant had failed to establish that his qualifying spouse would suffer extreme hardship if the waiver application were denied. Accordingly, the Form I-601, Application for Waiver of Grounds of Inadmissibility was denied.

On appeal, counsel for the applicant contended that the field office director erred in finding the applicant inadmissible under section 212(a)(6)(C)(i) of the Act because the applicant was a minor at the time he presented a photo-switched passport in an attempt to enter the United States and as such, he lacked the capacity to commit fraud or to make a willful misrepresentation of a material fact. Counsel also asserted that the applicant made a timely retraction of his misrepresentation and did not obtain any benefit through his misstatements. Finally, counsel asserted that even if the applicant were inadmissible, he had established that his qualifying spouse would suffer extreme hardship if his waiver application was denied and he merited a favorable exercise of discretion.

In our decision, dated May 13, 2013, we stated that despite being a minor at the time of his misrepresentation, the applicant had the legal capacity to make a willful misrepresentation and he did not make a timely retraction of his misrepresentation. We also stated that whether the applicant actually obtained a benefit through a misrepresentation was irrelevant to an inadmissibility determination under section 212(a)(6)(C) of the Act as indicated by the statutory language. We then stated that the record established the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act. We also stated that the applicant had failed to establish that his U.S. citizen spouse would suffer extreme hardship as a result of his inadmissibility. The appeal was dismissed accordingly.

In a motion, dated June 17, 2013, but received by the AAO on May 5, 2014, counsel requests that our previous decision be reconsidered because, as a minor and someone acting under desperation and duress, the applicant lacked the capacity to make a willful misrepresentation. Counsel also requests that our previous decision be reopened to consider new hardship evidence to the applicant's spouse as a result of the applicant's inadmissibility.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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, on September 8, 2001, the applicant, then 15 years old, arrived at the John F. Kennedy (JFK) International Airport and presented a photo-switched Ghanaian passport and U.S. visitor's visa in the name of [REDACTED]. He was referred to secondary inspection, where he issued a sworn statement indicating that he was the rightful bearer of the passport, that he had applied for the visa in person at the U.S. Embassy in Ghana, and that he had previously visited the United States as a tourist. Later that same day, the applicant gave a second sworn statement in which he admitted his true identity, conceded that the passport and visa did not belong to him, and stated that he had lied in his first sworn statement.

On appeal, counsel alleged that the applicant was not inadmissible under section 212(a)(6)(C)(i) of the Act for making a willful misrepresentation of a material fact. Counsel stated that because the applicant was 15 years old, a minor, at the time he applied for entry, he did not have the legal capacity to make a willful misrepresentation of material fact. On motion counsel again asserts that the applicant did not have the legal capacity to make a willful misrepresentation because he was a minor and because he was acting in desperation and under duress.

In our previous decision, we addressed counsel's assertions regarding the applicant's legal capacity, as a minor, to make a willful misrepresentation and found, after an individualized inquiry into the applicant's maturity level and ability to understand the nature and consequences of his false statement, that the record established that the applicant did have the legal capacity to make a willful misrepresentation. See *Singh v. Gonzales*, 451 F.3d 400, 407 (6th Cir. 2006) and *Malik v. Mukasey*, 546 F.3d 890, 892-893 (7th Cir. 2008). In her motion to reconsider, counsel does not cite to any new case law or point to new facts arising in the applicant's case to support her assertion regarding the applicant's legal capacity as a minor. Thus, we will not disturb our previous finding.

Similarly, in his motion, counsel asserts that the applicant did not have the legal capacity to make a willful misrepresentation in that he was acting in desperation and under duress. Counsel asserts that the applicant was acting in desperation and duress because of the trauma he experienced in Ghana. Counsel also cites to psychological studies indicating that trauma can alter emotional and cognitive behavior and cites to *Matter of Pula*, 19 I&N Dec. 467 (BIA 1987), a case involving an

asylum applicant. The standards used for review in an asylum case are not relevant to our current proceeding. As counsel has failed to establish new facts and/or relevant case law in regards to the applicant's misrepresentation, we again find that the record shows the applicant willfully misrepresented a material fact and is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides:

- (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.

Under section 212(i) of the Act, a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant or to his two U.S. citizen children can only be considered insofar as it causes extreme hardship to his qualifying spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 of Immigration Appeals (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 U.S. 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 v. INS*, 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 of hardship on appeal included: statements from the applicant and his qualifying spouse; statements from the applicant’s sister and three of the applicant’s friends; a psychological evaluation regarding the qualifying spouse; country conditions information; financial records; documentation regarding the qualifying spouse’s education and career in nursing; records regarding the applicant’s education in the United States; and a copy of the applicant’s daughter’s birth certificate. On motion, the record of hardship includes: updated sworn statements from the applicant and his spouse; a birth certificate for the applicant’s second child, born in 2012; financial documentation, documentation regarding the emotional dependency of the applicant’s spouse on the applicant; documentation regarding costs of childcare in the Washington DC metro area; and country conditions information for Ghana. The entire record was again reviewed and all relevant information considered in reaching a decision on motion.

On appeal, we found that the record did not establish that the applicant’s spouse would suffer extreme financial and emotional hardship as a result of separation. Specifically, the financial

documentation failed to show that the applicant's spouse and daughter would suffer from the loss of the applicant's income and/or ability to help care for their children. We also indicated that the emotional hardship presented did not rise to the level of extreme hardship because the psychological evaluation performed on the applicant did not indicate that the applicant's spouse was diagnosed with a serious mental health problem or that she needed further treatment for her mental health condition.

On appeal, we also found that the record did not establish that the applicant's spouse would suffer extreme hardship as a result of relocating to Ghana with her young child. We stated that the applicant's spouse was originally from Ghana and did not have extensive family ties to the United States. We also stated that the country conditions information indicated that conditions in Ghana are generally poor, but did not show that the applicant's spouse would have been forced to abandon her profession of nursing if she relocated and/or she would not have been able to support her family financially in Ghana.

On motion we find that the record now establishes that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility. In regards to separation, the record indicates that the emotional and financial hardship that will be suffered by the applicant's spouse will rise to the level of extreme.

The record establishes that the applicant and his spouse now have two children, with their youngest child being 2 years old. The record also includes current letters from the applicant's and his spouse's employers. The letter indicates that the applicant's spouse works full time as a nurse on the night shift schedule for \$27.50 per hour. Because the record previously showed a large fluctuation in the applicant's spouse's salary, indicating that she earned approximately \$58,000 in 2009 and \$25,000 in 2008, we will consider her income based on her current per hour rate and fulltime schedule. Thus, the record indicates that the applicant's spouse earns approximately \$57,000 per year. Likewise, the record indicates through the last three years of the applicant's tax returns, that he earns anywhere from \$28,000 to \$50,000 per year working full time as a security guard for \$12.36 per hour. Based on this hourly rate and fulltime schedule, the applicant's current income is approximately \$25,000 per year. With the applicant earning approximately 30% of the household income, a budget worksheet in the record, with supporting documentation indicates that the applicant's spouse would suffer significant financial hardship without the applicant's income. In addition, without the applicant in the United States, the couple will have to place their children in daycare, adding another expense to their financial situation.

In regards to emotional hardship, the record previously indicated that the applicant's spouse was suffering anxiety as a result of the possibility of being separated from the applicant. She now states that her anxiety is worsening at the thoughts of separation and that she finds herself losing focus at work. She states that she needs the applicant in the United States because due to her career advancement, he has become the main caregiver for their children. Thus, the applicant's spouse will suffer extreme emotional and financial hardship as a result of separation because not only will she lose 30% of her household income, leaving her unable to pay for her expenses; she will also be in a situation where she has to choose between paying for daycare for two children

and furthering her career; and, as the psychological evaluation and letters from friends indicates, her anxiety is likely to worsen.

In regards to relocating to Ghana, the record now establishes that the applicant's spouse will suffer extreme hardship as a result of relocation. Although the applicant's spouse is originally from Ghana, she came to the United States at the age of 25 years old and has been living in the United States for 12 years. The record indicates that she has significant ties to the United States in that she has two U.S. citizen children, she and her husband own land in Virginia, she and her husband are active in their church community, and she has an established nursing career in the United States. The applicant's spouse also asserts that she would suffer upon relocation because of the country conditions in Ghana. She states that nurses in Ghana are not regularly paid for their work and that relocating with her children would cause her great concern because of the lack of health care and education in the country. Country conditions reports submitted on motion indicate that the nursing profession is suffering in Ghana due to a lack of career development and poor working conditions. One report indicates that Ghanaian nurses earn 14 times less than their American and Canadian counterparts. Furthermore, other reports indicate that Ghana is a country that faces problems associated with extreme poverty and that a child's health can suffer in this environment. Thus, the record indicates that the applicant's spouse's concerns regarding her career and her children's health are well founded and that combined with her ties to the United States, warrant a finding that she will suffer extreme hardship as a result of separation. We also acknowledge that numerous letters from family and friends as well as a psychological evaluation corroborate the applicant's spouse's assertions regarding her financial and emotional hardship upon separation and upon relocation.

Considered in the aggregate, the applicant has established that his spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

*Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin*, *supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin*, *supra*, is only for the purpose of

the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

*Matter of Mendez-Moralez* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives). . . .

*Id.* at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in the applicant's case include: the extreme hardship his spouse and children will face if he is not granted a waiver; his U.S. citizen sibling; his lack of any criminal record in the United States; his continued employment in the United States; and, as attested to by numerous family and friends, his attributes as a loving husband and father. The unfavorable factors in the applicant's case include his misrepresentation to gain entry into the United States and his subsequent illegal residence in the United States.

Although the applicant's violation of immigration law is serious, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden. The motion is granted and the appeal sustained.

**ORDER:** The motion is granted and the appeal sustained.