



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **MAR 21 2014**

OFFICE: ST. PAUL

[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,

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Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, St. Paul, Minnesota 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 The Gambia 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 procuring a nonimmigrant visa 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 and denied the application accordingly. *See Decision of the Field Office Director*, dated June 19, 2013.

On appeal, counsel for the applicant asserts that the applicant's spouse would suffer financial, emotional and medical hardship upon separation from the applicant. Counsel further asserts that the applicant's spouse cannot relocate to The Gambia because she would suffer financial, religious and medical hardship in addition to leaving behind her family ties in the United States.

In support of the waiver application and appeal, the applicant submitted financial documentation, letters from the applicant and his spouse, identity documents, letters of support, medical documentation, background country conditions relating to The Gambia and legal documents. 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 record reflects that the applicant divorced his ex-spouse on March 10, 2009 and no children were born of their marriage. On May 13, 2009, the applicant misrepresented his marital status, indicating that he was still married on his Form DS-156, Nonimmigrant Visa Application. Subsequently, on May 20, 2009, the applicant stated that he was married with two children during a consular interview. On July 16, 2012, the applicant admitted to an immigration officer that he was previously married, but did not have any children.

Counsel for the applicant asserts that the applicant's misrepresentation of his marital and familial status was not material in nature, as the applicant still had a home and employment awaiting him in The Gambia. Counsel further asserts that there has been no affirmative finding that the consular officer would not have approved the applicant's nonimmigrant visa if the true facts were known.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

To establish eligibility for a non-immigrant B1/B2 visa, section 101(a)(15) of the Act states, in pertinent part:

- a. an alien...having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

The U.S. Department of State Foreign Affairs Manual further provides:

The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.

DOS Foreign Affairs Manual, § 41.31 N. 3.4.

By stating that he was married and had children when applying for a nonimmigrant visa, the applicant led the consular officer to believe that he had close family ties in his home country. By failing to disclose that he was single, he cut off a line of inquiry which was relevant to the applicant's eligibility for a visitor visa. As the applicant's misrepresentation tended to shut off a line of inquiry that could have affected the outcome of a decision on his Form DS-156 application, his misrepresentation was material. There exists no requirement of an affirmative finding that the consular officer would not have approved the applicant's nonimmigrant visa if the applicant were truthful. It is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring a visa through fraud or misrepresentation.

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. 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-Moralez*, 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 The Gambia. The applicant’s spouse is a 34-year-old native and citizen of the United States. The applicant is currently residing with his spouse and stepchildren in [REDACTED]

Counsel for the applicant asserts that the applicant’s spouse would experience emotional and financial hardship as a single parent, upon separation from the applicant. Counsel contends that the applicant and his spouse are both employed, but his spouse and two stepchildren rely upon the applicant’s income and health insurance. The applicant’s spouse asserts that she and the applicant are joint parents in the lives of her biological children and that she would suffer without the applicant’s financial contribution. The applicant’s spouse also asserts that she would be unable to visit the applicant in The Gambia for financial reasons. It is noted that the applicant’s stepchildren are not qualifying relatives in the context of this application so that any hardship they would suffer will be considered only insofar as it affects the applicant’s spouse.

The applicant’s spouse asserts that she is employed as a direct care professional and works as a caregiver on a part-time basis so she has the ability to overlap childcare with the applicant. The

applicant's spouse contends that, upon separation from the applicant, she would have to procure a position consistent with normal daycare hours and cover the costs of daycare and medical bills on her own. The record contains 2012 tax documentation for the applicant and his spouse indicating that the applicant earned a higher income than his spouse in that year. However, the record also indicates that the applicant and his spouse met in August 2010 and married on August 5, 2011, and there is no indication that the applicant's spouse had been unable to meet the financial obligations of her family prior to marriage. The applicant's spouse, on her Form G-325A, Biographic Information, indicates that she was unemployed from January 2009 to August 2011, but there is no information as to how she was able to support herself during that period of more than two years. Further, though the applicant's spouse is currently working in a part-time position, there is no indication that she would be unable to secure full-time employment. 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)).

Counsel asserts that the applicant's spouse is suffering from precarious health and will lose the assistance and care of her spouse if he returns to The Gambia. The applicant's spouse asserts that she would worry about the applicant if he returned to The Gambia, with its high levels of poverty. The record contains medical notes for the applicant's spouse. The applicant's spouse asserts that she was diagnosed with diabetes approximately four years ago, for which she measures her blood sugar levels and schedules checkups twice a year. The applicant's spouse asserts that she was also diagnosed with a rare thyroid condition, which she manages without medication, and visits an endocrinologist twice a year for monitoring. The applicant's spouse contends that based upon her medical history, including surgeries for C-section, uterus repair, gallbladder, gastro bypass, skin removal and umbilical hernia, she worries about any future health issues and how they would impact her. The applicant's spouse also asserts that she has been experiencing extreme back pain and is seeking a solution for this medical issue. The applicant's spouse indicates that her diabetes and thyroid condition are currently controlled, and the record contains no medical evidence to the contrary. The record also does not contain a letter from the applicant's spouse's physician concerning her current medical conditions. 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, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would experience 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 hardship beyond the common results of removal upon separation from the applicant.

Counsel for the applicant asserts that the applicant's spouse has resided in the United States throughout her life and would leave behind her mother and two sisters if she relocated to The

Gambia. The applicant's mother and sibling submitted letters asserting that it would be hard not to be able to see the applicant's spouse if she resided in The Gambia.

The applicant's spouse asserts that she would be concerned about facing financial, medical and religious hardship if she relocated to The Gambia. The applicant's spouse contends that she is not Muslim, while 90% of the residents of The Gambia are Muslim. The applicant's spouse further contends that she and the applicant accept one another's different religions, but such acceptance would not be extended to her upon relocation. It is noted that the U.S. Department of State's International Religious Freedom Report on The Gambia, dated May 20, 2013, indicates that the constitution, laws and policies of the country protect religious freedom. There were no reports of abuses of such freedom at the governmental level and no reports of societal discrimination based upon religion. The U.S. Department of State Country Information for The Gambia indicates that medical facilities are very limited and some treatments are unavailable. However, there is no evidence that the applicant's spouse would be specifically unable to obtain her biannual checkups for her thyroid, diabetes or back pain, or that her son would not have access to necessary asthma medication. The applicant's spouse asserts that she would be concerned about the effect of the climate of The Gambia upon her son's asthma, but there is also no indication that he would be unable to continue to treat his asthma with medication, as in the United States.

The applicant's spouse asserts that she is concerned about her family's finances in The Gambia because a large percentage of the country lives in poverty. The applicant's spouse contends that she is uncertain if she would be allowed to work in The Gambia and that she needs to afford the proper food in her diet to maintain her health. The applicant's spouse also asserts that she does not know how her family would afford fees for her children's education. The U.S. Department of State Country Information for The Gambia states that the official language of the country is English and there is no indication that the applicant's spouse would be unable to obtain employment upon relocation. The record also indicates that the applicant was employed as a health officer for [REDACTED] for approximately four years in The Gambia, and there is no indication that he would be unable to secure a similar position upon his return. It is also noted that the applicant's Form G-325A, Biographic Information, states that his mother currently resides in The Gambia, and there is no information concerning the extent to which she would or could assist in his family's relocation.

There is insufficient evidence in the record to show that the hardships faced by the applicant's spouse, in the aggregate, would rise to the level of extreme hardship if she relocated to The Gambia.

Although the depth of concern over the applicant's family's circumstances is neither doubted nor minimized, the fact remains that a waiver of inadmissibility is available only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, a waiver of inadmissibility is available only in cases of extreme hardship and not in every case where a qualifying relationship exists. 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).

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 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 determining whether the applicant 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.