



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[REDACTED]

Date: **MAR 25 2014**

Office: NEWARK

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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of Burkina Faso, 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 procuring admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with her U.S. citizen spouse and children.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.<sup>1</sup> See *Decision of the Field Office Director*, August 1, 2013.

On appeal, counsel contends that the analysis of previously submitted evidence by U.S. Citizenship and Immigration Services (USCIS) was incorrect, and he submits additional financial evidence. See *Form I-290B, Notice of Appeal or Motion*, dated August 30, 2013, and *Brief in Support of Appeal*, dated October 1, 2013.

The record includes, but is not limited to, the following documentation: counsel's appeal brief; statements by the applicant, her spouse, and their acquaintances; psychological evaluations for the applicant's spouse; financial documentation; school records and certificates for their children; and country-conditions information on Burkina Faso. The entire record was reviewed and considered in rendering a decision on the appeal.

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 indicates that the applicant entered the United States on July 16, 2001, using her sister's name, passport, and non-immigrant visa. The record does not reflect a departure from the United States since her admission in 2001. The applicant does not contest her inadmissibility.

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<sup>1</sup> The record indicates that the applicant previously filed a Form I-601 on June 7, 2011. The Field Office Director, Newark, New Jersey, denied the initial Form I-601, finding that the applicant failed to establish that her removal would cause extreme hardship to a qualifying relative. See *Decision of the Field Office Director*, April 28, 2012. There is no indication in the record that the applicant appealed the denial of her first Form I-601.

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

The Attorney General [now Secretary of the Department of Homeland Security (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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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 v. INS*, 138 F.3d 1292, 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.

Counsel contends that the applicant’s spouse would suffer psychological hardship if the applicant’s waiver application is not approved. The record includes an affidavit from a licensed professional counselor, dated June 1, 2011, which states that the applicant’s spouse is overwhelmed and frightened about the chance that the applicant may be forced to leave the United States and that he may have to care for their children without her. The record also includes a psychologist’s evaluation, dated May 15, 2012, stating that the applicant’s spouse has developed depressive and anxiety-based symptomatology as a direct result of his fear of becoming separated from the applicant and indicating that the applicant’s spouse was referred to another psychologist. The second psychologist, in his letter dated June 9, 2012, states that the applicant’s spouse was diagnosed with generalized anxiety disorder with symptoms of depression.

Counsel contends that the Field Office Director gave the psychological evaluations little or no evidentiary weight, which is “tantamount to an exclusion from evidence” and therefore a violation of the applicant’s due process rights. The AAO does not have appellate jurisdiction over constitutional issues; therefore this assertion will not be addressed in the present decision.

According to the evaluation of May 15, 2012, the applicant was referred to a psychologist for psychotherapy, and the record reflects that the applicant received a second psychological evaluation on June 9, 2012. The second evaluation indicates that the applicant’s spouse’s anxiety and depression would worsen if the applicant returns to Burkina Faso and that his overall functioning would deteriorate further, perhaps permanently. However, the evaluation fails to provide the type of detailed psychological analysis that typically supports a mental-health diagnosis and is not the product of an ongoing treatment relationship. Although the AAO is sympathetic to the family’s circumstances and recognizes that the input of any health professional is valuable, the record does not show that the applicant’s spouse’s psychological hardship, and the symptoms he has experienced, are extreme, atypical, or unique compared to others separated from a spouse. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

Counsel further contends that the applicant’s spouse financially depends on the applicant. He submits evidence showing that the applicant’s spouse was unemployed when the family filed their 2012 federal income tax return and that the applicant’s spouse collected unemployment benefits; that year the family reported an adjusted gross income of \$64,012. Financial documentation in the record indicates that the applicant’s spouse was formerly employed as a manager with the Hess Corporation and that in 2011, the applicant and her spouse had an adjusted gross income of \$136,623. The record also indicates that the applicant and her spouse own a home and that in December 2011, the principal balance on the mortgage for their home was \$86,429, with monthly payments of \$1,236. The record, however, lacks evidence of other assets and liabilities the applicant’s spouse acquired in the United States. It also lacks evidence to support concluding that he could not find employment or meet his financial obligations in the applicant’s absence.

The AAO recognizes that the applicant’s spouse will endure hardship as a result of separation from the applicant. However, the record lacks sufficient evidence demonstrating that the impacts of separation on the applicant’s spouse are in the aggregate above and beyond the hardships normally experienced, such that the applicant’s spouse would experience extreme hardship if the waiver application is denied and he is separated from the applicant.

Regarding hardship that the applicant’s spouse may experience if he were to relocate to Burkina Faso, the record indicates that the applicant’s spouse was born and educated in Burkina Faso and thus is familiar with the language and customs of that country. Additionally, evidence shows that the applicant’s husband lived in Burkina Faso until he was 35 years old and his family still resides there.

The applicant's spouse contends that he would not find work or reasonable wages in Burkina Faso. The evidence is insufficient to establish that the applicant's husband would be unemployed or underemployed in Burkina Faso. Furthermore, the applicant has not shown that she and her spouse would be unable to support their family. The record indicates that the applicant's parents and the applicant's spouse's sister reside in Burkina Faso. The evidence does not address whether and to what extent the applicant would receive assistance from family members. Although the applicant's husband would likely experience a decline in his standard of living there, the record does not establish that he would suffer economic hardship beyond the common results of deportation. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (holding that mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The applicant's spouse, moreover, contends that he is concerned about political unrest in Burkina Faso. To support this contention, the applicant submits a copy of the Country Reports on Human Rights Practices for 2011: Burkina Faso, published by the U.S. Department of State, Bureau of Democracy, Human Rights and Labor. According to this report, in November 2010 the president of Burkina Faso was reelected to his fourth term with more than 80 percent of the vote. While the report describes some demonstrations and related violence, it does not indicate widespread political unrest or instability.

The applicant's spouse states that he is concerned about the education and safety of their children, were they to relocate to Burkina Faso. To support this contention, the applicant submits a 2008 report titled, *Education in Burkina Faso at Horizon 2025*. While the report provides detailed information about the current structure and resources of education in Burkina Faso, it also focuses on how education in Burkina Faso may be improved, concluding with five potential scenarios concerning the future of the country's educational programs.

The applicant's spouse additionally contends that he is concerned that their children would have extreme difficulty adjusting to life in Burkina Faso. As stated above, under 212(i) of the Act, children are not deemed to be qualifying relatives, and a child's hardship will only be considered to be a factor if it affects whether a qualifying relative experiences extreme hardship. The applicant's spouse states that his life "would be much worse" if their children had to experience certain "adversities" in Burkina Faso.

Based on the evidence on the record, the applicant has not established that her spouse would experience hardship beyond the common results of removal if he were to relocate to Burkina Faso to reside with her. Although the applicant asserts her spouse would experience financial and emotional hardship in Burkina Faso, the evidence in the record does not establish that this hardship would be extreme. Considering the evidence of hardship in its cumulative effect, including the concerns the applicant's spouse has about their children adjusting to life there, the applicant has not established that her spouse would experience extreme hardship were he to return to Burkina Faso with her.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate but expected disruptions and difficulties arising whenever a spouse is refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship he would face rises to the level of extreme as contemplated by statute and case law.

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.