



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

DATE: **NOV 07 2014**

Office: NEWARK

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:

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 is a native and citizen of Senegal 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 obtained a visa, other documentation or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant 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 with her U.S. citizen spouse and children.

The field office director found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 4, 2014.

On appeal, counsel submits the following: a brief, an affidavit from the applicant, an affidavit from the applicant's spouse, a support affidavit, a marriage certificate from Senegal, biographic documents pertaining to the applicant and her family, medical documentation pertaining to the applicant's spouse, a letter from the applicant's spouse's aunt regarding circumcision in Senegal, and business and financial documentation. 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...

With respect to the field office director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, the record establishes that the

applicant misrepresented her ties to the United States when she applied for a B Visa in November 2008. Specifically, the applicant claimed to be married, listing the name of her current husband as her spouse. However, on the same form, on question 37, the applicant marked "NO" to the question of whether she had a husband who was a U.S. Legal Permanent Resident or U.S. citizen. Electronic USCIS records indicate that her husband became a lawful permanent resident of the United States in 1995, and obtained U.S. citizenship in 2003, well before the applicant's 2008 nonimmigrant visa application.

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 (FAM) 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.

*FAM 41.31 N. 3.4.*

Although we are not bound by the Foreign Affairs Manual, we find its analysis to be persuasive. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought.

See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). By failing to disclose her marriage to a U.S. citizen, the applicant led the American Embassy in Dakar to believe that she had close family ties, namely, a Senegalese husband, in her home country. By failing to disclose that she was married to a U.S. citizen, she cut off a line of inquiry which was relevant to the applicant's request for a visitor visa.

In addition, the applicant misrepresented herself again when she last entered the United States in 2013. Specifically, the record establishes that the applicant last entered the United States on July [REDACTED] with a valid B-2 Visa. On July [REDACTED] approximately 13 days after entering the United States as a visitor, the applicant married<sup>1</sup> her current husband in the State of New Jersey.

The FAM states, in pertinent part:

a. You should apply the 30/60-day if an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry, that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by:

- (3) Marrying and taking up permanent residence; or
- (4) Undertaking any other activity for which a change of status or an adjustment of status would be required, without the benefit of such a change or adjustment.

If an alien violates his or her nonimmigrant status in a manner described in 9 FAM 40.63 N4.7-1 within 30 days of entry, you may presume that the applicant misrepresented his or her intention in seeking a visa or entry.

9 FAM 40.63 N4.7-1, 7-2.

Had the applicant disclosed to the immigration officer when applying for entry to the United States on July [REDACTED] that the man who she claims she thought was her lawful husband based on her marriage ceremony in Senegal in [REDACTED], was a U.S. citizen, and that she intended to enter the United States to pursue permanent residency, the immigration officer would have denied the applicant entry to the United States, as she would no longer have been eligible for the B-1/B-2 visa. Evidence of her

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<sup>1</sup> The applicant asserts in a declaration that she married upon entering the United States because she was advised by her immigration lawyer that her October [REDACTED] Muslim marriage conducted in Senegal, was not considered valid as her husband was already married at that time to someone else. The applicant states that she was advised to marry in a civil ceremony for the sole reason of fulfilling the requirements of U.S. law.

intent to pursue permanent residency is the fact that she married her husband in a civil ceremony days after entering the United States, pursuant to her lawyer's advice, and that she applied for adjustment of status approximately three months after her July 2013 entry. As such, based on the evidence in the record, the applicant is inadmissible under section 212(a)(6)(C) of the Act, for fraud or willful 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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or her three children, born in 2000, 2008 and 2013, can be considered only insofar as it results in hardship to a 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 v. I.N.S.*, 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 applicant’s U.S. citizen spouse contends that he will suffer emotional and medical hardship were he to remain in the United States while his spouse relocates abroad due to her inadmissibility. In a declaration, the applicant’s spouse explains that he loves his wife very much and needs her by his side. He further maintains that he suffers from numerous medical issues and needs his wife to help him monitor and manage his conditions. Finally, the applicant’s spouse explains that he cannot properly care for their three children on his own and alternatively, he states that were his children to accompany the applicant abroad, they would be at risk of forced circumcision.

With respect to the emotional hardship the applicant’s spouse states he would experience were the applicant to relocate abroad while he remained in the United States, the record does not establish that this hardship would be beyond the normal hardships associated when a spouse relocates abroad due to inadmissibility. Further, while medical documentation has been provided establishing that the applicant’s spouse is being treated for heart disease, hyperlipidemia and diabetes mellitus type 2, the documentation from the applicant’s spouse’s treating physician fails to detail what, if any, role the applicant plays in her husband’s care, and what specific hardships the applicant’s spouse may experience were his wife to reside abroad. In addition, the applicant has not provided any documentation establishing the hardships the applicant’s spouse would experience were he to become primary caregiver to their three children. Alternatively, no documentation has been provided by the applicant establishing that her children would experience hardship in Senegal were they to relocate there with the applicant. As for the applicant’s spouse’s concerns regarding forced circumcision in Senegal, as noted by the applicant’s aunt in her letter, her parents authorized the circumcision. The record does not indicate that the applicant or her spouse would authorize such

actions or alternatively, that they would be unable to stop their daughters from being circumcised. 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)). The applicant has thus not established that her U.S. citizen spouse would experience extreme hardship were he to remain in the United States while she relocates abroad as a result of her inadmissibility.

With respect to relocating abroad to reside with the applicant as a result of her inadmissibility, the applicant's spouse does not detail what specific hardships, if any, he would experience were he to relocate to his home country to reside with the applicant. The applicant's spouse states that her husband must be in the United States to conduct his business and he recently purchased a home in New Jersey as he wishes to remain in the United States. The applicant's spouse has not provided any documentation establishing that he would not be able to continue his business while residing in Senegal. Nor has he detailed what hardships he would experience were he to leave his home in New Jersey to reside abroad. It has thus not been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's 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, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although we are not insensitive to the applicant's spouse's situation, the record does not establish that the hardships 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.<sup>2</sup>

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<sup>2</sup> In his brief counsel suggests that should the appeal not be sustained that the matter be remanded to the original office to instruct the applicant to "file Form I-601A..." Form I-601A is available only to applicants whose sole ground of inadmissibility is unlawful presence under section 212(a)(9)(B) of the Act. See 8 C.F.R. § 212.7(e). As the applicant is inadmissible under another ground she is not eligible to file Form I-601A.