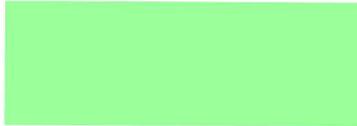


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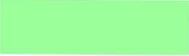


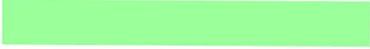
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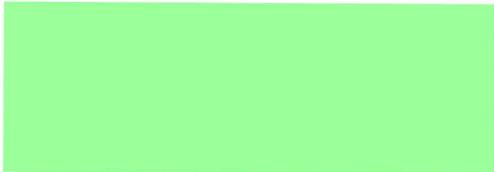
OFFICE: SAN FRANCISCO

FILE: 

IN RE: 

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:

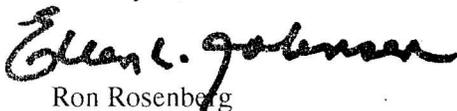


INSTRUCTIONS:

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 Field Office Director, San Francisco, California 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 Canada 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 entry into the United States 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 children.

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 April 22, 2014.

On appeal, counsel for the applicant asserts that the applicant's spouse will suffer financial, medical and psychological hardship if she is separated from the applicant. Counsel further asserts that the applicant's spouse will suffer medical, emotional and financial hardship if she relocates to Canada with the applicant.

In support of the waiver application and appeal, the applicant submitted a declaration, identity documents, a declaration from his spouse, medical and psychological documents concerning the applicant's spouse, background information for Canada, family photographs, letters of support, records from the applicant's business, financial documentation and property owner 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...

The applicant states that he has been living and working in the United States since 2007. The applicant acknowledges that when stopped at the border of Canada and the United States, he concealed this information and stated that he was simply visiting the United States. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring entry into the United States through fraud or misrepresentation. The applicant does not dispute this ground of inadmissibility on appeal.

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 40-year-old native and citizen of Canada. The applicant’s spouse is a 33-year-old native of Ethiopia and citizen of the United States. The applicant is currently residing with his spouse and child in Oakland, California.

Counsel for the applicant asserts that the applicant’s spouse would be unable to make monthly mortgage payments on her salary alone, leaving her and her son homeless. Counsel further asserts that the applicant’s spouse, as a single mother, would have little time or income to attend to her medical and psychological needs. The applicant contends that his spouse would have to stop working if he departed from the United States because she needs to care for their child. The applicant speculates that his spouse may end up on welfare in his absence.

The applicant’s spouse states that she is employed part-time as a waitress, earning approximately five hundred dollars weekly. The record contains a letter from the applicant’s spouse’s employer stating that she works as a cashier/waitress for [REDACTED] for five days a week and five hours per shift. The applicant’s spouse asserts that she does not believe she could obtain more hours of work from her employer since the schedules are set. The applicant’s spouse further asserts that if she worked more hours, she would have no time for her son and that there is only so much assistance her cousins can provide in caring for her child.

The record contains no supporting documentation indicating that the applicant is carrying a mortgage on his home in the United States. Rather, the applicant states that the expense of maintaining their home, including property taxes, totals approximately seven to eight hundred dollars a month. The record also indicates that the applicant’s spouse and her child currently

receive medical care through [REDACTED] health care program and there is no indication that this would cease in the absence of the applicant.

The applicant's spouse states that her relatives help her provide care for her son, occasionally even fighting with one another over who will be allowed to babysit. As such, there is no indication that the applicant's spouse would be unable to continue in her part-time employment upon separation from the applicant. The record contains some financial documentation, but does not contain a monthly accounting of expenses and supporting documentation. Accordingly, the evidence in the record is insufficient to find that the applicant's spouse would be unable to maintain the household expenses in the absence of the applicant¹. 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)).

The applicant's spouse asserts that the applicant is everything to her and that she and her son could not live without him. The applicant's spouse states that she had a terrible relationship with her first husband, as he was angry that she could not have sex as often as he desired due to female circumcision. The record contains letters of support stating that the applicant accepts his spouse for who she is and they have a loving and respectful relationship. The record also contains psychosocial notes concerning the applicant's spouse, spanning from October 2012 to December 2012, containing a diagnosis of anxiety. The notes indicate a goal of managing stress through stress management techniques. The record does not contain any updated information concerning the applicant's spouse's anxiety or an indication of continued therapy.

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 would leave behind extended family members and a supportive Ethiopian community if she relocated to Canada. Counsel contends that these individuals have been there for the applicant's spouse after her surgeries and that the applicant's spouse meets with her cousins every Sunday. As noted, the record contains letters of support submitted by friends and relatives of the applicant's spouse in the United States. Conversely, the applicant asserts that his family members in Canada are not supportive of his relationship with the applicant's spouse. The applicant's spouse asserts that it would be difficult to adjust to Canada and terrible for her son to experience such a negative family environment. It is noted that the applicant's child is not a qualifying relative in the context of this application so that any hardship he would suffer will be considered only insofar as it affects the applicant's spouse. It is also noted that the applicant's spouse asserts that English is not her first language, causing her

¹ It is noted that the Field Office Director, in the April 22, 2014 decision, determined that the applicant had demonstrated that his spouse would incur difficulty in meeting the household's financial obligations upon separation from the applicant, but noted that economic detriment alone is insufficient for a finding of extreme hardship. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

difficulty, but this language barrier is a detriment whether the applicant's spouse resides in the United States or Canada

The applicant asserts that his family would face financial hardship if they relocated to Canada because he believes that they would lose money on the sale of their home and his business. The applicant contends that he would have difficulty finding employment in his field in Canada and lacks the capital to open his own business. The applicant further states that his spouse would be unable to work in Canada because she would have to care for their child.

The record contains background information regarding Canada and its employment rates. It is noted that the applicant's Form G-325A, Biographic Information, indicates that he has been employed as an engineer. One of the background articles submitted by the applicant, [REDACTED] indicates that companies in Canada are complaining about a shortage of certain types of employees, including engineers. Further, as a property and business owner in the United States, there is evidence that the applicant would be able to raise an amount of capital to put toward the creation of a business. The applicant asserts that the dissolution of his corporation would take great financial resources that he does not possess, but the record does not include sufficient supporting documentation for this assertion. In addition, the applicant's spouse currently works a part-time shift during the applicant's non-working hours. It is acknowledged that the applicant has a minor child who requires care, but there is no explanation concerning why the applicant's spouse would be unable to continue with part-time employment upon relocation.

Counsel asserts that it would cause the applicant's spouse extreme hardship to leave behind her medical providers in the United States and that she would not be immediately eligible for healthcare in Canada. The applicant's spouse states that she has had surgeries due to her female circumcision and that her last medical surgery was in 2008 or 2009, for a cyst that disappeared after her pregnancy. The applicant's spouse asserts that she was told by a physician that her cyst could reappear. The record contains medical documentation for the applicant's pregnancy and past surgeries. The medical documentation consists of records and there is no indication of continuing treatment for the applicant's spouse at this time. Absent a plain language explanation by a treating physician of the applicant's spouse's medical condition, the AAO is unable to reach any conclusions concerning the severity of the condition or the necessity of any continuing treatment. It is noted that there is no indication that the applicant's spouse and child would be unable to obtain medical services in Canada, as necessary. It is also noted that the applicant's spouse states she believes that eventually she would be all right, medically, in Canada.

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 Canada.

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. We therefore find 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.