



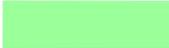
U.S. Citizenship
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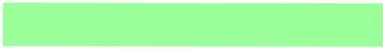


Date: **SEP 05 2014**

Office: COLUMBUS, OHIO

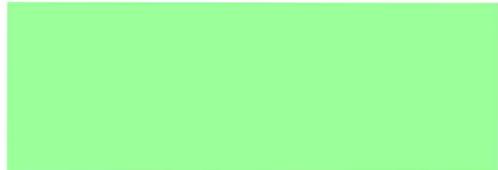
FILE: 

IN RE:

Applicant: 

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, Columbus, Ohio. An appeal to the Administrative Appeals Office (AAO) was dismissed. The AAO granted a subsequent motion to reconsider and affirmed the previous decision to dismiss the appeal. The matter is again before the AAO on a motion to reopen and reconsider. The motion will be granted, and the prior AAO decision to dismiss the appeal is affirmed.

The applicant is a native and citizen of Somalia 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 attempting to procure admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside in the United States with his U.S. citizen spouse.

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. *Decision of the Field Office Director*, dated January 25, 2011.

Reviewing the applicant's Form I-601 on appeal, we found that although the applicant established that his qualifying relative would experience extreme hardship if she were to relocate to Somali to reside with him, he failed to establish that his qualifying relative would experience extreme hardship were she to remain in the United States and we dismissed the appeal accordingly. *Decision of the AAO*, dated January 6, 2012. The applicant, through counsel, filed a motion to reopen and reconsider this decision. We granted this motion and affirmed the previous decision to dismiss the appeal. *Decision of the AAO*, dated February 20, 2014.

On March 24, 2014, the applicant submitted Form I-290B, Notice of Appeal or Motion. The Form I-290B indicates that the applicant is filing a motion to reopen and a motion to reconsider. According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. On motion, counsel presents additional evidence, including a new affidavit filed by the applicant's spouse, medical documentation and a psychological evaluation for the applicant's spouse, and financial documentation. According to 8 C.F.R. § 103.5(a)(3), 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. On motion, counsel's brief includes precedent decisions in support of stated reasons for reconsideration. As the applicant has submitted new documentary evidence to support her claim, and cited precedent decisions, the motion to reopen and reconsider will be granted.

On motion, counsel asserts that, in the decision of February 20, 2014, we found the Field Office Director failed to properly consider the claim of extreme hardship to the applicant's qualifying relative, and therefore we should have remanded the matter to the Field Office Director. In our decisions of January 6, 2012 and February 20, 2014, we found that the applicant established that his qualifying relative would experience extreme hardship if she were to relocate to Somalia to be with the applicant, but concurred with the field office director that extreme hardship had not been established upon separation if the applicant's spouse were to remain in the United States. Although counsel asserts that

the matter should be remanded to the field office for additional fact-finding and further evaluation of the extreme hardship claim, we maintain plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record includes, but is not limited to: briefs by applicant's counsel, affidavits from the applicant's spouse, a psychological evaluation for the applicant's spouse, financial documentation, medical documentation, and country-conditions information about Somalia. The entire record was reviewed and considered in rendering a decision on the motion.

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 attempted to enter the United States on June 20, 1999 by presenting a Dutch passport and misrepresenting himself to be a citizen of the Netherlands. Upon further examination at the port of entry, the applicant admitted that he was an imposter and requested asylum. The applicant was charged with willful misrepresentation of a material fact and placed in removal immigration proceedings.

The applicant previously did not contest his inadmissibility. However, in the brief in support of the Form I-290B, counsel now contends that although the applicant was found inadmissible for misrepresentation, USCIS acknowledges that he did provide his true identity at the port of entry and sought asylum in the United States due to his fear to return to Somalia. Counsel states that it has been well-established that the use of a false passport and misrepresentations to border officials to get into the United States by a person fleeing persecution are consistent with an asylum claim, and cites two cases in the U.S. Court of Appeals for the Ninth Circuit: *Kaur v. Ashcroft*, 379 F.3d 876 (9th Cir. 2004), and *Paramasamy v. Ashcroft*, 295 F.3d 1047 (9th Cir. 2002).

We note that a timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for section 212(a)(6)(C)(i) ineligibility. 9 FAM 40.63 N4.6. Whether a retraction is timely depends on the circumstances of the particular case. *Id.* In general, it should be made at the first opportunity. *Id.* If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview. *Id.*

The doctrine of timely recantation is of long standing and ameliorates what would otherwise be an unduly harsh result for some individuals, who, despite a momentary lapse, simply have humanity's usual failings, but are being truthful for all practical purposes. *See Llanos-Senarillos v. United States*,

177 F.2d 164, 165-66 (9th Cir. 1949). The Board of Immigration Appeals (BIA) has recognized the virtue of applying that principle when an alien “voluntarily and prior to any exposure of the attempted fraud corrected his testimony that he was an alien lawfully residing in the United States.” *Matter of M—*, 9 I. & N. Dec. 118, 119 (BIA 1960); *see also Matter of R— R—*, 3 I. & N. Dec. 823, 827 (BIA 1949). In addition, the BIA has found “recantation must be voluntary and without delay.” *Matter of Namio*, 14 I. & N. Dec. 412, 414 (BIA 1973). And, when the so-called retraction “was not made until it appeared that the disclosure of the falsity of the statements was imminent [, it] is evident that the recantation was neither voluntary nor timely.” *Id.*

As we noted in the decision of January 6, 2012, the record documents that the applicant attempted to enter the United States by presenting a fraudulent Dutch passport to an inspection officer at [redacted] International Airport. The applicant told the inspection officer that he was a student in the Netherlands and that he was coming to the United States for vacation. The inspection officer asked the applicant several questions which the applicant could not answer, such as where and what he studied, arousing suspicion that he was not being truthful, and referred the applicant to secondary inspection. It was only during secondary inspection that the applicant revealed he was not the person listed on the Dutch passport. He was detained for a period of twenty days and then given a credible fear interview on June 30, 1999. It is noted that during proceedings before the immigration judge, the applicant testified that he had paid a smuggler \$3,500 to come to the United States with fraudulent documents, and conceded that he was inadmissible under section 212(a)(6)(C)(i). The immigration judge found the applicant not credible about several material facts, including his identity, denied his asylum claim and ordered him removed. *Oral Decision of the Immigration Judge*, December 18, 2000. The BIA dismissed the applicant’s appeal in April 2003 and also dismissed two motions, the last one in 2007.

The decisions upon which counsel relies do not address inadmissibility for presenting false documents, but rather the issue of credibility in the asylum context, holding that the use of false documents for travel is not a proper basis for an adverse credibility determination in that context. In the asylum context, the U.S. Court of Appeals for the Ninth Circuit cite held that “untrue statements by themselves are not reason for refusal of refugee status,” but should be evaluated “in the light of all of the circumstances of the case.” *Turcios v. INS*, 821 F. 2d 1396, 1400 (9th Cir. 1987). The immigration judge, in this particular case, did not rely upon the applicant’s use of false documentation when attempting to enter the United States in making the decision to deny the applicant’s asylum claim. The immigration judge found the applicant not credible about several material facts beyond the applicant’s false statements to the immigration officer at the port of entry, and an appeal to the BIA was subsequently dismissed.

In this case, as noted above, the applicant presented a Dutch passport to an immigration officer in an attempt to procure admission to the United States and only revealed his misrepresentation after he was detained for further questioning. The applicant is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.¹

¹ As noted in the AAO’s January 6, 2012 decision dismissing the applicant’s appeal, the record also shows that the applicant was convicted of providing false identity to a police officer, Ohio Revised Code, section 4513-361 on [redacted], 2004. Additionally, the record shows that the applicant was convicted of several traffic offenses, including speeding, driving without an operator’s license, reckless operation of a motor vehicle, and a tag violation. The Field Office Director

Section 212(i) of the Act provides that:

The Attorney General [now the Secretary 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. 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

did not address whether the applicant had been convicted of a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Similarly, the AAO will not determine whether the applicant's crimes involve moral turpitude and whether he is therefore inadmissible under section 212(a)(2)(A)(i)(I) of the Act, as a waiver under section 212(i) of the Act would entitle him to a waiver under section 212(h) of the Act.

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. 1993), (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.

We previously determined, in decisions of January 6, 2012, and February 20, 2014, that the applicant established that his spouse, a native of Somalia and a U.S. citizen who was resettled in the United States as a refugee, would suffer extreme hardship if she were to relocate to Somalia to be with the applicant. However, we dismissed the appeal because the applicant failed to establish that his spouse would experience extreme hardship were she to remain in the United States. As we have already determined that the applicant’s qualifying relative will experience extreme hardship upon relocation, we will examine only the hardship she would experience due to separation in this decision, including documentation submitted with the present motion.

On motion, counsel contends that the applicant’s spouse fears that she could not support herself in the applicant’s absence. Financial documentation submitted on motion includes a copy of a recent pay stub for the applicant’s spouse showing an income of \$700 for the two-week pay period, a Form W-2 for the applicant’s spouse showing her 2013 income as \$12,000, an apartment lease agreement, evidence of automobile payments and automobile insurance payments, and a copy of a Form W-2 for the applicant. As noted in our previous decision, the applicant’s spouse previously filed federal income tax returns listing herself as the head of household, and having income in the range of \$11,989 to \$24,843. The evidence in the record remains insufficient to establish that the applicant’s spouse would experience financial hardship in the applicant’s absence.

The applicant's spouse states that she is under a doctor's care for a thyroid condition and takes medication daily. The record includes a doctor's statement indicating that the applicant's spouse has a diagnosis of hypothyroidism. However, there is no evidence to establish that the condition of the applicant's spouse requires support or assistance from the applicant.

Counsel further contends that the mental health of the applicant's spouse has been affected by the possibility of being separated from the applicant and that her mental condition will decline, causing extreme psychological hardship and stress-related physical illness if the applicant's waiver application is not approved. In support of this contention, the applicant submits a psychological evaluation for the applicant's spouse, which provides the diagnosis of mild anxiety and depression symptoms. Counsel states that the applicant and his spouse have been attempting to start a family and are currently undergoing fertility treatments to help the applicant's spouse get pregnant. We previously noted that the record lacked documentary evidence that she has sought fertility treatments, and on motion, the applicant submits a copy of an appointment card with a fertility specialist, but no further documentation or explanation from the physician concerning her condition or any needed treatment. Although the AAO is sympathetic to the family's circumstances, the record does not show that psychological hardship to the applicant's spouse and the symptoms she 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).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

Although the applicant has demonstrated that his spouse would experience extreme hardship if she relocated abroad to reside with him, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* separation, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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 motion is granted and the prior AAO decision to dismiss the appeal is affirmed.