



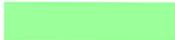
U.S. Citizenship
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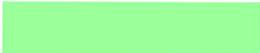


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Office: NEWARK

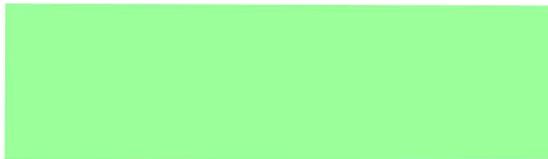
FILE: 

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.

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey. An appeal to the Administrative Appeals Office (AAO) was dismissed. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted, the prior AAO decision will be withdrawn, and the underlying appeal will be sustained.

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.¹ See *Decision of the Field Office Director*, August 1, 2013.

Reviewing the applicant's Form I-601 on appeal, we concurred with the Field Office Director that extreme hardship to a qualifying relative had not been established and dismissed the appeal. See *Decision of the AAO*, dated March 25, 2014.

On motion, counsel contends that we erroneously concluded that the applicant had not established that her qualifying relative would experience extreme hardship if the waiver application is denied, and submits additional evidence of hardship to her spouse.

The record includes, but is not limited to, the following documentation: briefs filed by counsel in support of Form I-601 and Form I-290B, Notice of Appeal or Motion; statements by the applicant, her spouse, and their acquaintances; statements from the applicant's sister and half-brother residing in Burkina Faso; 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.

¹ 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.

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 applicant does not contest her inadmissibility.

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.

On motion, counsel contends that the applicant’s spouse will suffer financial hardship if the wavier application is not approved. In our previous decision, we found that the evidence submitted showed 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 the family reported an adjusted gross income of \$64,012 for that year; that the applicant’s spouse was formerly employed as a manager with the [REDACTED] and that in 2011 the family reported an adjusted gross income of \$136,623. Based on this evidence, we found that the applicant failed to establish that her spouse could not find employment or meet his financial obligations in her applicant’s absence.

On motion, the applicant submits a copy of her 2013 federal income tax return which indicates that her spouse is no longer receiving unemployment benefits, and the family had an adjusted gross income of \$26,306. Counsel notes that the applicant's spouse has been unable to find employment, and asserts that he is economically dependent upon his wife, despite his best efforts to find work. The evidence in the record is sufficient to show that the qualifying spouse would be unable to meet his financial obligations in the applicant's absence.

Counsel also 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 stating 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 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. In our previous decision, we noted that the psychological reports provided to the record did not provide detail about his condition or any ongoing treatment. On motion, counsel asserts that the financial evidence in the record makes it obvious that the applicant's spouse is unable to afford ongoing treatment.

The record establishes that if the waiver application were denied, the applicant's spouse would experience financial and psychological hardship as a result of loss of the applicant's income and support, and the separation from his spouse. These hardships, when considered in the aggregate, are beyond the common results of removal and would rise to the level of extreme hardship if he remained in the United States without the applicant.

Regarding hardship that the applicant's spouse may experience if he were to relocate to Burkina Faso, in our previous decision, we noted that 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. We further noted that although the applicant's spouse contends that he would not find work or reasonable wages in Burkina Faso, the evidence was insufficient to establish that the applicant's husband would be unemployed or underemployed in Burkina Faso, or that the applicant and her spouse would be unable to receive support their family.

On motion, the applicant submits affidavits from her sister and her half-brother, both of which describe the economic hardship of life in Burkina Faso and their inability to provide any support to the applicant and her spouse if they were to relocate to Burkina Faso. In addition, the affidavit from the applicant's half-brother notes that he has received support from the applicant when he was sick, and that the applicant provided additional support to pay for his education.

In addition, we note that the applicant has three U.S. citizen children who have lived their whole lives in the United States. Counsel states that the children are dependent upon the applicant. The applicant's spouse states that he is concerned about the education and safety of their children, and that he is concerned that their children would have extreme difficulty adjusting to life in Burkina Faso. Court decisions have found extreme hardship in cases where the language

capabilities of the children were not sufficient for them to have an adequate transition to daily life in the applicant's country of origin. For example, *Matter of Kao and Lin*, 23 I&N Dec. 45, 50 (BIA 2001), the BIA concluded that the language capabilities of the respondent's 15-year-old daughter were not sufficient for her to have an adequate transition to daily life in Taiwan. The girl had lived her entire life in the United States and was completely integrated into an American life style. The BIA found that uprooting her at this stage in her education and her social development to survive in a Chinese-only environment would constitute extreme hardship. In *Ramos v. INS*, 695 F.2d 181, 186 (5th Cir. 1983), the circuit court stated that "imposing on grade school age citizen children, who have lived their entire lives in the United States, the alternatives of . . . separation from both parents or removal to a country of a vastly different culture where they do not speak the language," must be considered in determining whether "extreme hardship" has been shown. In *Prapavat v. INS*, 638 F. 2nd 87, 89 (9th Cir. 1980) the Ninth Circuit found the BIA abused its discretion in concluding that extreme hardship had not been shown to the aliens' five-year-old citizen daughter, who was attending school, and would be uprooted from the country where she lived her entire life and taken to a land whose language and culture were foreign to her.

Based on the evidence on the record, including evidence of financial hardship and the effects of hardship to their children on her spouse, the applicant has 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.

Thus, the record establishes that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. See *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good

character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, “balance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the U.S. citizen spouse and three children would face if the applicant were returned to Burkina Faso, regardless of whether they accompanied her or remained in the United States, the applicant’s residing in the United States for more than nine years, her apparent lack of a criminal record, and letters of reference on her behalf. The unfavorable factor in this matter is her unlawful entry the United States.

The immigration violation committed by the applicant is serious in nature. Nonetheless, we find that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary’s discretion is warranted.

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 been met.

ORDER: The motion is granted, the prior AAO decision is withdrawn, and the underlying appeal is sustained.