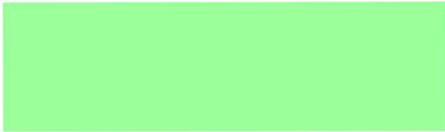




U.S. Citizenship
and Immigration
Services

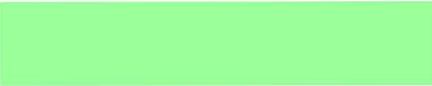
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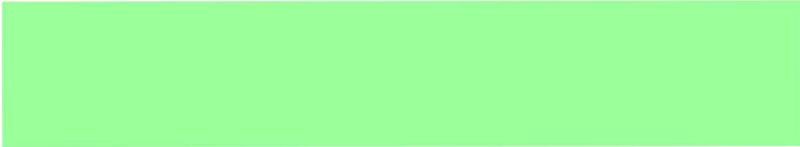
Office: SEATTLE

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, Seattle, Washington. 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 Mali, 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, and for seeking to procure an immigrant benefit 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 his U.S. citizen spouse.

The Field Office Director concluded that while the applicant had established that extreme hardship would be imposed on a qualifying relative if he was separated from her, the applicant failed to establish that he warranted a favorable exercise of the Secretary's discretion for approval of the waiver, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, February 12, 2014.

On appeal, counsel contends that the applicant warrants a positive exercise of discretion, and submits a brief citing previously submitted evidence regarding hardship to the applicant's spouse, and the applicant's good moral character.

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 from the applicant's spouse; medical and psychological documentation for the applicant's spouse; financial documentation; letters of reference; and country conditions information on Mali. 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 was issued a nonimmigrant visitor visa at the U.S. Consulate in [REDACTED] Mali on September 12, 2000, and entered the United States on November 18, 2000. In a declaration, the applicant stated at the time of his nonimmigrant visa application he claimed that he was married.

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:

(B) 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 Foreign Affairs Manual, at 9 FAM 41.31 N3.4, 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.

By claiming he was married at the time of his nonimmigrant visa application, the applicant represented that he had a close family tie in Mali. By omitting the fact that he was not married, he cut off a line of inquiry which was relevant to the applicant's request for a nonimmigrant visa. As such, we concur with the Field Office Director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation with respect to his nonimmigrant visa application in 2007.

In addition, the record indicates that on May 16, 2002, the applicant submitted a Form I-589, Application for Asylum and Withholding of Removal, in which he used a false name and date of birth and indicated that he was born in Guinea. The applicant testified under oath before an immigration judge using the false identity, and providing detailed oral testimony regarding his past persecution and well-founded fear of persecution in Guinea. In subsequent applications to the U.S. Citizenship and Immigration Services (USCIS) following his marriage to a U.S. citizen, the applicant identified himself with the name and date of birth on the passport he used to enter the United States in 2000, with his country of birth as Mali. As such, we concur with the Field Office Director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation with respect to his attempt to procure an immigration benefit through his application for asylum in the United States.

The applicant does not contest his inadmissibility.

Section 212(i) of the Act provides that:

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 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 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 wife 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-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. 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.

The Field Office Director determined that the applicant established that his qualifying relative would experience extreme hardship if she were separated from the applicant. Medical documentation in the record indicates that the applicant’s spouse suffers from several medical conditions, including a ruptured disc in her upper spinal column, thoracic scoliosis, degenerative disk disease, high blood pressure, and diabetes. The record further indicates that the applicant’s spouse is under medication for depression, and a letter from a clinic indicates that she suffers from post-traumatic stress due to her relationship with her previous husband, who was abusive. The applicant’s spouse states that she fell behind on her mortgage payments due to her husband’s unemployment situation, and that she is behind on her medical bills.

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

In addition, the Field Office Director determined that the applicant established that his qualifying relative would experience extreme hardship if she were to relocate to Mali to be with the applicant. The applicant's spouse was born in the United States and has strong family ties in the United States, including two children from a previous relationship. She is unfamiliar with the culture and customs of Mali. Counsel notes that the applicant's spouse would experience hardship due to the difficulties she would face accessing appropriate medical care for her medical conditions. Counsel further states that the applicant's spouse would have difficulty finding employment in Mali.

On March 21, 2014, the U.S. Department of State updated the travel warning for Mali, strongly warning against travel to the northern parts of the country and along the border with Mauritania, and noting that while the security situation in [REDACTED] and southern Mali remains relatively stable, the potential for attacks throughout the country, including in [REDACTED] remains. *See Travel Warning-Mali, U.S. Department of State*, dated March 21, 2014.

We thus concur with the Field Office Director that, based on the evidence in the record, the applicant has established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Mali to reside with the applicant.

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-Morales, 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 7th Circuit Court of Appeals held in *Garcia-Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991), that less weight is given to equities acquired after a deportation order has been entered. Further, the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of deportation proceedings, with knowledge that the alien might be deported. It is also noted that the Ninth Circuit Court of Appeals, in *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), held that an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998), need not be accorded great weight by the district director in a discretionary determination. Moreover, in *Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992), the Fifth Circuit Court of Appeals held that giving diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien’s possible deportation was proper. We find these legal decisions establish the general principle that “after-acquired equities” are accorded less weight for purposes of assessing favorable equities in the exercise of discretion.

The favorable factors in this matter are the extreme hardships the applicant’s U.S. citizen spouse would face if the applicant were returned to Mali, regardless of whether she accompanied him or remained in the United States; the applicant’s apparent lack of a criminal record; and letters of reference on his behalf.

The unfavorable factors in this matter include the applicant’s misrepresentation before the U.S. Consulate in [REDACTED] Mali in order to obtain a nonimmigrant visa and his misrepresentations in his application for asylum and his testimony before an immigration judge, in which he claimed a false identity and nationality.

We recognize that the applicant’s spouse will endure hardship as a result of separation from the applicant. However, as noted above, it is proper to give diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien’s possible deportation. *Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992). In this case the applicant was ordered removed on April 24, 2004. The applicant married his spouse on October 4, 2005. Subsequent to this marriage, the couple was divorced on October 22, 2007, and remarried on June 18, 2009. Both marriages to the applicant’s qualifying relative were after the applicant was issued with his order of removal. We therefore accord factors related to his spouse diminished weight.

The totality of the evidence demonstrates that the favorable factors in the present matter are outweighed by the unfavorable factors.

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.