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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: AUG 26 2015

[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:

[Redacted]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Dallas Field Office, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Eritrea who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for misrepresenting a material fact to gain admission into the United States. The applicant is married to a U.S. citizen, who filed a Form I-130, Petition for Alien Relative, on her behalf. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband and daughter.

The Field Office Director concluded that the applicant did not establish that her qualifying spouse would suffer extreme hardship and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of Field Office Director*, dated June 3, 2014.

On appeal the applicant, through counsel, asserts that the Field Office Director did not consider the facts and circumstances of this particular case, including conditions in Eritrea; and she did not consider the entire range of hardship factors in their totality. *Brief in support of Form I-290B, Notice of Appeal or Motion*, filed July 1, 2014.

The record includes, but is not limited to, identity and relationship documents, two psychological evaluations, financial documents, reports describing conditions in Eritrea, some of the applicant's immigration records from the United Kingdom, letters demonstrating good moral character and close family and community ties, and photographs. 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.

Section 212(i) of the Act provides:

- (1)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.

In the present case, the applicant was admitted into the United States on June 26, 2009, at Dulles International Airport under the visa waiver program using a fraudulent United Kingdom passport under an assumed identity. The applicant is therefore inadmissible under section 212(a)(6)(C) of the Act for procuring admission to the United States through willful misrepresentation of a material fact. The applicant does not contest her inadmissibility.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996). The applicant's U.S. citizen spouse is her qualifying relative.

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 at 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.

The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse is her only qualifying relative, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

We will first address hardship to the applicant's spouse if he relocates to Eritrea to be with the applicant. The applicant declares that she is uncertain that the applicant would be allowed to enter Eritrea, because he was born in Ethiopia. She asserts that if he relocates with her to Eritrea, he would suffer emotional and financial hardship, along with potential peril to his personal safety.

The applicant's spouse, an asylee from Ethiopia, has lived in the United States for approximately 20 years, which the record reflects is nearly half of his life. His mother, grandmother, siblings and other extended family members also live in the United States. The applicant's spouse and the licensed professional counselor who evaluated him several times in 2014 conclude that he would suffer emotionally if he is separated from his family, particularly his mother, who has health issues.

If he were to relocate, the applicant's spouse fears Eritrean authorities would persecute him on account of his Ethiopian nationality. He says that the best case scenario, he and his daughter would be treated very poorly, but there is a very real possibility that he would suffer arrest, abuse, detention, torture and even death. The applicant provides a Human Rights Watch report from 2011 that outlines the Eritrean government's human rights violations, including forced labor conscription and arrests of individuals for reasons ranging from practicing their religion to owning Ethiopian music. She also submits an excerpt from the CIA World Fact Book describing Eritrea and its relationship with Ethiopia and a U.S. Department of State travel warning for Eritrea from 2013. The most recent version, updated in May 2015, warns U.S. citizens of the risks of travel to Eritrea and strongly advises them to avoid travel near the Eritrean-Ethiopian border and other regions where

large numbers of Eritrean and Ethiopian troops, and other international forces, may be present, particularly given “the military tensions between the two countries.” *Travel Warning, Eritrea*, at <http://travel.state.gov/content/passports/english/alertswarnings/eritrea-travel-warning.html> [last accessed on August 24, 2015].

The applicant’s spouse says that he also would suffer emotionally because their daughter would likely face diminished opportunities in Eritrea on account of her Ethiopian heritage. He expresses concern that he would be subjecting her to substandard health care and educational systems in Eritrea. The applicant notes that neither her spouse nor their daughter speaks the languages spoken in Eritrea, and the conditions there are inhumane and cruel.

On a financial level, the applicant’s spouse says that the unemployment rate in Eritrea is very high and that as an Ethiopian, his job opportunities would be greatly diminished. He is concerned that he would not be able to afford to visit his family in the United States. The record includes a human rights report that describes the government’s policy of forced labor at very low wages, in violation of several international treaties. Moreover, he says that he would like to complete his education, but that if he lived in Eritrea he would be unable to do so. He submits evidence of his current employment and health care insurance for himself, the applicant and their daughter. If he relocates, he will lose his employment and health care insurance coverage and become unable to repay his debts, including outstanding hospital bills from their daughter’s birth.

The evidence establishes that, given the emotional and financial circumstances the applicant’s spouse would face upon relocation to Eritrea, and taking into account country conditions and his ethnicity as factors, his hardship there would be beyond the normal difficulties a loved one may encounter upon relocation to another country. The evidence of emotional and financial hardship her husband would endure if he relocated, considered in the aggregate, supports concluding that he would experience extreme hardship in Eritrea.

The applicant also asserts that if her husband stays in the United States without her, he will experience emotional and financial hardship. To support her claim, she submits two psychological evaluations from 2014, prepared after five sessions, in which the counselor concludes that her spouse would suffer extreme psychological hardship should they be separated. The counselor states that the applicant’s spouse is currently experiencing clinically significant symptoms of depression and anxiety in response to the applicant’s potential removal. The counselor notes in his latest evaluation that the applicant’s spouse’s symptoms of depression and anxiety have worsened due to his concerns about the applicant’s immigration status. The counselor documents the applicant’s spouse’s descriptions of various manifestations of his emotional state, including headaches, low energy, lack of appetite and weight loss, and nightmares and insomnia. The applicant’s spouse expressed concern about his decreased ability to focus at work. Moreover, the applicant’s spouse reported an increase in his drinking and smoking, to cope with feelings of stress. As a result the counselor recommends, in his latest evaluation, that the applicant’s spouse start cognitive behavioral therapy and attend Alcoholics Anonymous meetings, because with the future in doubt, her spouse’s condition appears

to be deteriorating. The counselor concludes that the applicant's spouse has become severely emotionally impaired and his mental state has affected his ability to function.

The applicant's spouse also expresses concern about the emotional impact of separation on their daughter. His brother submits a statement referring to studies of the emotional health of children separated from their mothers. The applicant's spouse believes her hardship will also cause him emotional hardship.

The applicant and her spouse state that if the instant application is denied, and the applicant is returned to Eritrea, she would leave their two year-old daughter with her spouse in the United States. Presently she is the primary caregiver of their daughter, and her spouse works two jobs and long hours to support the family. If she returns to Eritrea, he would be unable to care for their daughter alone while also working full-time to support two households, his and the applicant's in Eritrea. The applicant's spouse's family is unable to help him care for their daughter, because they live in another state. The applicant's spouse also asserts he would not be able to afford to visit the applicant in Eritrea. The financial evidence shows that the applicant and her family have limited financial means. In 2012, they earned approximately \$17,000. In 2013, her spouse earned \$35,500. The applicant provided evidence of living expenses, overdrafts in bank-account statements, and running balances in billing statements.

The evidence establishes that the applicant's spouse would suffer emotional and financial hardship if he became responsible for childcare responsibilities while also maintaining full-time employment. The applicant has also shown that in addition to her spouse's own emotional hardship resulting from their separation, he would suffer emotionally out of concern for their young daughter's ability to adjust to their separation and her ensuing emotional hardship. Taking into account their daughter's age, her relationship with the applicant, and the evidence of the family's financial circumstances, the applicant has established that the hardship her husband would endure if he remained in the United States, considered in the aggregate, rises beyond the common results of removal or inadmissibility to extreme hardship.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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)...

Id. at 301. The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardship to the applicant's U.S. citizen spouse if her application were not approved, hardship to her U.S. citizen daughter, the applicant's family and community ties in the United States, and the applicant's apparent lack of a criminal record. The unfavorable factor in this matter is the applicant's misrepresentation to gain admission into the United States.

Although the applicant's immigration violation is serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of 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 appeal is sustained.