



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: FEB 02 2015 OFFICE: BALTIMORE

File [REDACTED]

IN RE: [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]

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Baltimore, 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 Kenya 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 having sought to procure admission to the United States by fraud or willfully misrepresenting material facts. The applicant, through counsel, seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside with his U.S. citizen spouse in the United States.

The District Director concluded the applicant failed to establish extreme hardship to his qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the District Director*, dated September 19, 2013.

On appeal, filed on October 18, 2013 and received by our office on September 24, 2014, the applicant submits that U.S. Citizenship and Immigration Services (USCIS) erred in denying his Form I-601 by applying “factually and legally flawed reasoning” and misapplying the standard of discretionary relief, because his U.S. citizen spouse will suffer emotionally, materially, mentally, physically, and psychologically upon his removal from the United States, and equitable factors outweigh discrepancies in his application. *See Form I-290B, Notice of Appeal or Motion*, dated October 15, 2013; *see also Brief in Support of Appeal*, dated November 15, 2013.

The record includes, but is not limited to: briefs and motions; correspondence; a sworn statement and additional statements by the applicant and his spouse; documents concerning identity and relationships; employment, financial, medical, and psychological documents; photographs; documents about conditions in Kenya; and Internet articles regarding various medical conditions.

Section 212(a)(6) of the Act provides, in relevant part:

(C) Misrepresentation.-

(i) In general.- 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.

...

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in relevant part:

(1) The Attorney General [now 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.

The Board of Immigration Appeals (BIA) has held that for immigration purposes, the term *fraud* “is used in the commonly accepted legal sense, that is, as consisting of false representations of a material fact made with knowledge of its falsity and with intent to deceive the other party.” *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). The “representations must be believed and acted upon by the party deceived to the advantage of the deceiver.” *Id.*

The intent to deceive, however, is not a required element for a willful misrepresentation of a material fact. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The relevant standard for a willful misrepresentation is knowledge of falsity. *Forbes v. INS*, 48 F.3d 439, 442 (9<sup>th</sup> Cir. 1995).

A misrepresentation is generally material only if the alien received a benefit for which she would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys*, 485 U.S. at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, 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 proper determination that he be excluded.

*Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

The record reflects that U.S. immigration officials admitted the applicant to the United States as a nonimmigrant visitor on May 29, 2007, with permission to remain until June 28, 2007. The applicant did not timely depart. He married his U.S. citizen spouse on October [REDACTED]. On May 18, 2009, the applicant concurrently filed an adjustment of status application with an alien relative petition filed by his spouse. In support of the application and petition, the applicant and his spouse included a divorce decree issued by the [REDACTED] which indicated that the applicant’s marriage to his previous spouse in Kenya was dissolved as of June [REDACTED]. The record reflects that the supporting document was analyzed and found to be fraudulent, and accordingly, USCIS denied the applicant’s adjustment application and alien relative petition on December 9, 2009. The applicant was placed in removal proceedings before the immigration court on January 29, 2010.

The record further reflects the applicant obtained a Judgment of Divorce from the Circuit Court for [REDACTED] granting him an absolute divorce from his Kenyan spouse on February [REDACTED]. The applicant subsequently obtained a Judgment of Annulment on July 2, 2010, indicating that his marriage to his U.S. citizen spouse on October [REDACTED] was “a nullity.” The applicant then proceeded to re-marry his U.S. citizen spouse on August [REDACTED]. The second alien relative petition she filed on his behalf was approved on June [REDACTED]. The record reflects that, on December 13, 2011, the immigration judge granted the U.S. government’s motion to terminate the applicant’s removal proceedings without prejudice so that he could pursue adjustment of status with USCIS.

Based on the foregoing, the applicant was determined to be inadmissible under section 212(a)(6)(C)(i) of the Act for having presented a falsified divorce certificate in support of his initial adjustment application as the spouse of a U.S. citizen. The applicant contests this finding of inadmissibility, and in the alternative, asserts his U.S. citizen spouse would suffer extreme hardship because of his inadmissibility.

In support of his appeal, the applicant states that he was in the United States at the time of the divorce from his previous spouse in Kenya, and she misled him regarding their marital relationship. Specifically, to show that he did not willfully make a material misrepresentation about his marital status and ability to marry a U.S. citizen, he claims that he trusted his former spouse to send him evidence of their divorce; he was shocked to later find that the decree was fraudulent and that she had been defrauded.

The evidence demonstrates the applicant signed his Form I-485, Application to Register Permanent Residence or Adjust Status, and in so doing, certified under penalty of perjury that the application and the evidence submitted with it are true and correct. The applicant has not submitted evidence demonstrating his legal incapacity or inability to understand the documents he signed. Moreover, the applicant has not submitted corroborating documentation concerning the circumstances of how he attempted to obtain proof of his divorce in Kenya. We therefore find that the applicant’s actions were willful as opposed to accidental, inadvertent, or in an honest belief that the facts were otherwise.

Foreign nationals must establish admissibility “clearly and beyond doubt.” *See* sections 235(b)(2)(A) and 240(c)(2)(A) of the Act. The same is true for admissibility in the context of an application for adjustment of status. *See Kirong v. Mukasey*, 529 F.3d 800, 804 (8th Cir. 2008). *See Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008); *see also Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008). Based on the foregoing, we agree that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and he requires a waiver under section 212(i) of the Act.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not relevant under the statute and is 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. 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-Morales*, 21 I&N Dec. 296 (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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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 BIA 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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.

In support of his appeal, the applicant submits a statement dated November 15, 2013, in which he indicates that he and his spouse love each other deeply, and they depend upon one another for support. He also indicates that he serves as his spouse's caregiver because of her medical issues, which include four surgeries because of a fibroid tumor; asthma; diabetes; and a sleep disorder which has caused her to stop breathing and requires her to take oxygen while she is asleep. He further states that he is required to drive his spouse to her medical appointments and her work because of her medical conditions.

In a statement dated November 14, 2013, the applicant's spouse indicates having the applicant in the United States with her is essential, as: she has experienced life-threatening illnesses, including respiratory disease that developed into asthma, depression, elevated cholesterol, high blood pressure, insulin-dependent Type II diabetes, obesity, obstructive sleep apnea, occasional blackouts, and severe ankle, chest, and leg pain; she has undergone fibroid removal, a hysterectomy, and the removal of a tumor from her liver; she was particularly depressed having undergone multiple surgeries, but the applicant has supported her by ensuring that she takes her insulin shots and eats a healthy diet; her depression has worsened, and she has endured high levels of anxiety, chest pain, and shortness of breath because of the applicant's immigration matters; she sustained an ankle injury in April 2012 resulting in her inability to walk properly, being unemployed since May 2013, and her dependency on medical insurance provided by the State; she received monthly temporary disability benefits, which total \$370; she and the applicant previously relied on his income for their expenses, totaling \$2,406; and their savings account is about to be depleted because they have been relying on it to meet their financial obligations as the applicant has not been working since the denial of his employment authorization.

As evidence of his spouse's medical and emotional hardship, the applicant submits numerous copies of medical records and reports from her treating physician, corroborating claims about her chronic medical conditions. The applicant also submits: a prescription history report from January 1 through October 21, 2013, indicating his spouse continues to be treated for asthma, blood pressure, cholesterol, diabetes, insomnia, and pain management; Internet articles that generally discuss diabetes and fibroids; and a letter from a licensed counselor dated July 31, 2012, indicating her diagnoses for depressive disorder and anxiety disorder as well as the counselor's recommendation that she continue to undergo mental-health services to effectively cope with her depression. The record establishes the applicant's spouse has been treated for ongoing physical and mental health conditions.

The applicant also submits evidence of his spouse's financial circumstances, including a letter from the [REDACTED] dated June 17, 2013, indicating his spouse is eligible for the Temporary Disability Assistance Program (TDAP) and that she was scheduled to receive a monthly benefit of \$185 in June and July 2013; a tax return for 2012 showing the applicant's family's adjusted gross income was \$64,890; a year-long residential lease agreement indicating a monthly rent of \$580 commencing on November 1, 2008; monthly billing statements; and checking and savings account statements. The record also includes Form I-912, Request for Fee Waiver, dated December 5, 2013, related to the applicant's application for a new employment authorization document, in which he states

that he lost his job because of the denial of his work authorization, he has been unemployed since September 17, 2013, and he and his spouse have been relying on her temporary disability payment, "which is due in April 2014."

The record is unclear concerning the applicant's and his spouse's financial circumstances, as the period of temporary assistance the applicant's spouse reported in her November 2013 statement differs from the applicant's claim that she continues to receive temporary disability payments; and the most recent financial statements in the record cover activities occurring in 2011, over three years before we received the applicant's appeal. Accordingly, the evidence does not permit us to reach a conclusion concerning the severity of the applicant's spouse's current financial situation and her related hardship.

Though the record is sufficient to establish the applicant's spouse may experience a degree of hardship in the applicant's absence, the evidence, considered in the aggregate, does not establish the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

The applicant's spouse indicates that relocating to Kenya to be with the applicant because of his inadmissibility would have disastrous consequences on her health, cause her significant psychological damage, and endanger her personal safety because of social, political, and economic conditions there. The applicant's spouse also indicates: her entire family lives near her in the United States, and she does not have any family in Kenya; her family is important to her, and because she is close to her mother and sister, separation from them would be devastating; her grandmother, whom she visits often, has been a source of strength in her life; she would be unable to afford the travel costs that average between \$1,500 and \$2,000 to visit her family in the United States; she has never been on a long distance flight, and she fears flying given her health issues; she would not have access to medical insurance or comparable medical facilities and expertise in Kenya; she intends to obtain a college education in the computer field, but she would be unable to pursue such an opportunity in Kenya; and she would be unable to secure employment in Kenya given her disabilities and its unemployment rate of 40 per cent. She notes that 56 per cent of its population lives below the poverty line. In support of her contentions, the applicant's spouse cites extensively to the July 2013 travel warning for Kenya issued by the U.S. Department of State and to articles posted on the [REDACTED] that discuss healthcare in Kenya and strikes by physicians there because of poor healthcare services. Also in support of his spouse's contentions, the applicant submits Internet articles that discuss the unemployment rate in Kenya and occupational wages that were in effect from May through August 2013.

The record reflects that the applicant's spouse, a native of the United States, has never lived outside the United States, where she maintains strong family and social ties and continues to receive treatment for her ongoing medical conditions. Moreover, in its latest travel warning for Kenya, the U.S. Department of State indicates:

U.S. citizens in Kenya ... should evaluate their personal security situation in light of continuing and recently heightened threats from terrorism and the high rate of violent crime in some areas. ... Violent and sometimes fatal criminal attacks, including armed carjackings, grenade attacks, home invasions and burglaries, and kidnappings can occur

at any time and in any location, particularly in Nairobi. U.S. citizens ... have been victims of such crimes within the past year [and]. should be extremely vigilant with regard to their personal security, particularly in crowded public places such as clubs, hotels, resorts, shopping centers, restaurants, bus stations, and places of worship [and] should also remain alert in residential areas, at schools, and at outdoor recreational events.

*Travel Warning, Kenya*, last updated June 19, 2014.

We thus conclude that, were the applicant's spouse to relocate to Kenya to be with the applicant due to his inadmissibility, she would suffer extreme hardship given her length of residence in, and extensive ties to, the United States; her medical conditions; conditions in Kenya; and the normal hardships associated with relocation. The record reflects that the cumulative effect of the hardship the applicant's spouse would experience as a result of the applicant's inadmissibility rises to the level of extreme.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. 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. at 886. 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. In re Pilch*, 21 I&N Dec. at 632-33. 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 this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find the applicant has not established extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act.

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.