



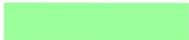
U.S. Citizenship
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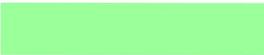
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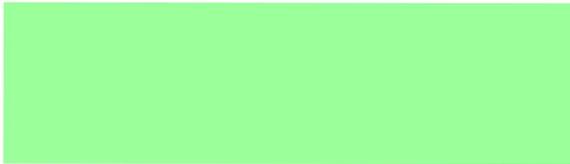
Office: NEW YORK

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 District Director, New York, New York, denied the waiver application and 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 Cote d'Ivoire who 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 is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse and children.

The district director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the District Director* dated May 1, 2014.

On appeal the applicant contends that the decision denying the waiver is erroneous in concluding that affidavits and supporting documentation did not establish extreme hardship to the applicant's spouse. With the appeal the applicant submits a copy of her spouse's asylum application, a psychological evaluation of the applicant's family, and country information for Cote D'Ivoire. The record contains affidavits from the applicant and her spouse, employment information for the applicant's spouse, tax returns for the applicant and spouse, medical documentation certifying that the applicant has been subjected to Female Genital Mutilation (FGM), country information for Cote D'Ivoire, and other evidence submitted in conjunction with the Petition for Alien Relative (Form I-130) filed on behalf of the applicant and with the Application to Adjust Status (Form I-485). 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 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.

The record reflects that the applicant entered the United States on [REDACTED], with a passport and B-1 visa issued in the name of another person. Although conceding that the applicant entered the United States using a different name, the applicant asserts on appeal that she should not be required to file a waiver application because she made a timely retraction. The applicant states that because of civil war and ethnic conflict she fled Cote D'Ivoire and entered Mali in [REDACTED]. She states that as she was stateless she used an assumed name with a genuine Malian passport to obtain a B-1 visa to the United States.

The applicant argues that she presented her true name and background to USCIS when she filed an Application for Asylum and Withholding of Removal (Form I-589) in January 2010, and states that although 10 years after her entry, this was her first available opportunity to correct the information. The applicant further argues that the Notice to Appear (NTA) placing her in removal proceedings before an immigration judge did not include the charge of fraud or misrepresentation and that Chief Counsel for U.S. Immigration and Customs Enforcement did not amend the NTA to include the charge.¹

The Board of Immigration Appeals has applied the doctrine of timely recantation 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 Board has found "recantation must be voluntary and without delay." *Matter of Namio*, 14 I. & N. Dec. 412, 414 (BIA 1973) (finding that an applicant's recantation of false testimony is neither voluntary nor timely if made a year later and only after it becomes apparent that the disclosure of the falsity of the statements is imminent). According to the USCIS Policy Manual, for the retraction to be effective, the applicant must correct his or her representation before being exposed by the officer or U.S. government official or before the conclusion of the proceeding during which he or she gave false testimony. USCIS Policy Manual, Volume 8: Admissibility, Part J, Chapter 3. The Foreign Affairs Manual also specifies that "[i]f the applicant has personally appeared and been interviewed, the retraction must have been made during that interview." 9 FAM 40.63 N4.6.

The record reflects that on [REDACTED] the applicant obtained a nonimmigrant visa from a U.S. consulate by using a name and nationality that are not hers and for an intended purpose that was not true. The applicant argues that the applicant made a timely retraction by correcting the information at the first available opportunity when she applied for asylum nearly 10 years after her entry to the United States. We find the applicant's argument unpersuasive as the record shows that after obtaining a visa based on fraudulent information the applicant used that visa to enter the United States, failing to notify immigration inspectors reviewing her documents upon her arrival that the information was incorrect. The applicant thus had the opportunity to correct her identity information long before filing an application for asylum. We therefore concur with the district director's

¹ The applicant's asylum application was referred to the Executive Office of Immigration Review on May 28, 2010, because she had not filed her application within one year of her last arrival to the United States and failed to file her application within a reasonable period of time given changed circumstances materially affecting her eligibility for asylum. Removal proceedings against the applicant were terminated by the immigration judge on June 8, 2012.

determination that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and requires a waiver of inadmissibility.

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 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. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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 appeal the applicant asserts that her spouse cannot support his family without the applicant because he drives a taxi to earn a modest income and would be unable to work while fulfilling the roles of two parents. In her affidavit the applicant states that her spouse works as a taxi driver, leaving the house at 4 a.m. and returning at 6 p.m. six days a week. The applicant states that she has a part-time job that allows her to look after the children or drop them off at daycare and that her spouse cannot work and meet parental obligations. The spouse states that it would be impossible to juggle his 84-hour work week and parenting without the applicant.

The applicant contends that if she is required to depart the United States she will have to take the children with her to Cote D'Ivoire, where her spouse cannot return because he was granted asylum from that country. She states that her spouse would worry about the safety of their children while fearing their daughter will be forced to undergo Female Genital Mutilation as did the applicant.

The applicant's spouse states that he and the applicant have a close bond, and due to the applicant's having experienced FGM, he could not bear to see her suffer if she returned to Cote D'Ivoire or to see the children leave with her. He states that he fears the applicant may suffer retribution if she returns to Cote D'Ivoire because of ethnic strife there and he fears that their daughter may be forced to undergo FGM because the applicant's mother has been pressuring the applicant to bring the children to Mali, where the family has fled, so they can have the FGM ceremony performed. The applicant also states that she fears her own [REDACTED] ethnic group because she is an opponent of FGM and asserts that if the applicant returned to Cote D'Ivoire she would be targeted because of her [REDACTED] ethnicity in addition to her opposition to FGM.

The psychological evaluation observes that the spouse's sole concern is to keep his family together where his children have opportunities and that he is not bitter at the loss of a professional law career in his native country and now being a taxi driver. It states that the applicant's spouse reports that because he fears separation from the applicant and their children he has a poor appetite, trouble sleeping and focusing, is anxious, and experiences crying episodes, and that test scores indicate the

spouse is in the severe range of depression and anxiety. The evaluation further states that the children's separation from their father would result in a high risk for the development of depressive symptomatology and separation anxiety disorder, and cites numerous studies showing that children separated from a parent for significant periods have a high risk of such disorders.

Here we find that the record establishes that the applicant's spouse will suffer extreme hardship as a consequence of being separated from the applicant. The record shows that the spouse works extensive hours and would likely have difficulty arranging and paying for long-term daycare for his children in the applicant's absence. The record further shows that the spouse has a close bond with the applicant due to her past experiences and that if she were to return to Cote D'Ivoire he would be concerned for her safety as well as that of his children, particularly his daughter, if they were to accompany the applicant.

We also find the record to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Cote D'Ivoire to reside with the applicant due to her inadmissibility. The applicant asserts that her spouse escaped from Cote D'Ivoire in [REDACTED] and was granted asylum in the United States, making it impractical and possibly dangerous for him to return as he would fear harm because of the former political activism that led to receive asylum, and he now has no ties to Cote D'Ivoire. The applicant's spouse also states that he fears being persecuted and again suffering trauma in Cote D'Ivoire, and that in the United States he has friends and a mosque, and can raise his family in peace.

Country information shows that despite improvement, Cote D'Ivoire continues to experience strife and conflict. Human rights information submitted by the applicant shows continued human rights abuses, particularly from security forces, as well as discrimination, sexual assault, and violence against women and children, including FGM, as well as against certain ethnic groups.

According to the U.S. Department of State, the embassy in Abidjan continues to monitor the security situation in Côte d'Ivoire closely and that many areas of the country are difficult to access with travel in these areas hazardous. It notes that outside of the major cities infrastructure is poor and medical care is limited. *U.S. Department of State, Bureau of Consular Affairs, September 4, 2014.*

As such, the record reflects that the cumulative effect of the spouse's length of residence in the United States and concerns for his safety as well as that of his children if he were to relocate rises to the level of extreme. We thus conclude that were the applicant unable to reside in the United States due to her inadmissibility, her spouse would suffer extreme hardship if he returned to Cote D'Ivoire with her. Considered in the aggregate, the applicant has established that her spouse would face extreme hardship if this waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 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 for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion 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 hardships the applicant's U.S. citizen spouse and children would face if the applicant is not granted this waiver, the passage of time since the applicant's immigration violation, and her apparent lack of a criminal record. The unfavorable factor in this matter is the applicant's entry to the United States through misrepresentation.

Although the applicant's immigration violations are 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.