



U.S. Citizenship
and Immigration
Services

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DATE: **JUL 21 2015**

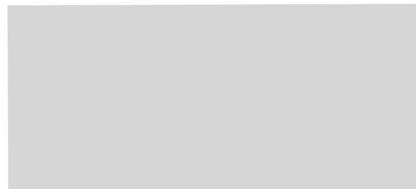
FILE: 

APPLICATION RECEIPT: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



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

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant is a native of Somalia and citizen of Canada 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 having obtained asylum status in the United States through fraud or misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse and children.

The director determined that the applicant had not established extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Director*, dated January 16, 2015.

On appeal, the applicant, through counsel, submits additional evidence to support his claim that his qualifying spouse will suffer extreme hardship if his waiver application is denied. *See evidence submitted in support of Form I-290B, Notice of Appeal or Motion*, dated February 7, 2015.

The record includes, but is not limited to: a brief, identity and relationship documents, statements of the applicant and his wife, a psychological evaluation, medical records, financial records, letters describing the applicant's character and activities in the Somali community in Minnesota, and reports on conditions for Somalis in Canada. The entire record was reviewed and all relevant evidence considered in reaching 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 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 record reflects that in 1997, the applicant presented himself as a citizen of Somalia to conceal his Canadian citizenship to request asylum status in the United States. The record reflects that the applicant, after receiving asylum here, subsequently entered the United States as a nonimmigrant visitor rather than as an asylee to avoid jeopardizing his asylee status. The applicant was paroled into the United States for removal proceedings in August 2013. The immigration judge administratively closed the proceedings in September 2014. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act, for obtaining asylum status and seeking admission to the United States through fraud or misrepresentation. The applicant concedes he is inadmissible under section 212(a)(6)(C) of the Act.

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. The applicant's qualifying relative is his U.S. citizen spouse. 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 record contains references to hardship the applicant's children 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 the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

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.

We will first address hardship the applicant’s qualifying wife would experience if she relocated to Canada with the applicant. The applicant asserts his spouse would experience financial, medical, and social hardship upon relocation to Canada.

With respect to his wife’s financial hardship, the applicant asserts that he and his wife would have difficulty finding employment in Canada. He and his spouse state that he left Canada for the United States in 1997 only because of his difficulties in finding employment. The applicant provides a report of immigrant-employment research, prepared by the Government of Canada, which states that female immigrants face greater obstacles when entering Canada’s labor market than do males and that the employment rate of female immigrants was 47 percent, lower than that of males, which was 68 percent. The document’s conclusions appear to rely on 2003 survey data. He also submits a job description of the position his wife held as a teacher assistant. The applicant adds that although his wife once worked, she stopped after becoming physically unable to work due to conditions related to early onset menopause and post-polio syndrome. The applicant submits medical evidence showing that his spouse has been diagnosed with those conditions. In addition, he states that it would be financially impossible for him to pay the filing fees for Canadian immigrant visas for his family. He submits visa-filing fee information published on the Internet by the Government of Canada.

Concerning his spouse's medical hardship upon relocation, the applicant asserts that in addition to early onset menopause and post-polio syndrome, his wife suffers from major depressive disorder. He fears that his wife would have limited or no access to health care in Canada. The applicant submits no corroborating evidence for his assertion that his wife's access to health care in Canada would be limited. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

To address the cultural and social hardship his spouse would experience upon relocation, the applicant's spouse says she has no family support in Canada and that she is connected to the Somali community in Minneapolis. The applicant states that Somali-Canadians are marginalized in Canada and subject to "horrendous crimes." Both the applicant and his wife say that to place their children in such an environment would be shameful to them as parents. The applicant submits an article about the gang-related deaths of Somali-Canadians in western Canada. He also includes articles about Somali-Canadians trying to prevent radicalization of their children and about problems with the Alberta school system.

The evidence is insufficient to establish that the applicant's wife would face greater obstacles to health care and employment in Canada than in the United States. Moreover, the record shows that the applicant has limited income but traveled to Kenya and Ethiopia in 2013; without specific financial evidence, it is reasonable to conclude that, given the cost of travel, he therefore may have sufficient resources to pay Canadian visa fees for his family. In addition, the evidence, while showing that his spouse has been diagnosed with certain medical conditions, does not support concluding that she would be physically or emotionally unable to work in Canada. Furthermore, while the applicant expresses concern about exposing his children to gang-related violence and terrorist-group recruitment in Canada, he also includes evidence showing that he has ingrained law-abiding and community values in his children, thereby diminishing such threats. The evidence, considered in the aggregate, therefore, does not establish that the applicant's spouse would suffer extreme hardship as a result of relocation.

Addressing the hardship she would experience if she remained in the United States while the applicant returned to Canada, the applicant's wife writes that she would have difficulty functioning alone because she is affected by post-polio syndrome, depression and menopause. She says that she also suffers from constant migraines and needs help to get out of bed. She expresses concern that if the applicant is removed to Canada, she may have no health insurance and her conditions would go untreated. To support these claims, the applicant submits notes of a clinic visit in 2014, indicating that his wife has a history of polio and that she described early menopause in addition to pain and weakness in one leg. The applicant also submits articles from the Mayo Clinic website describing post-polio syndrome, perimenopause, and depression.

Concerning the emotional hardship the applicant's spouse would experience if they were separated, a psychologist states that, according to the applicant's wife, her depression was precipitated by learning that the applicant was subject to removal proceedings. The applicant's wife states that she is afraid that she would become so incapable and immobilized by the applicant's absence that she

may lose custody of their children. The applicant submits a psychological evaluation, in which his wife is diagnosed with major depressive disorder, single episode, severe. The psychologist recommends follow up therapy and a medication consultation.

The applicant and his wife also state that she is unlikely to secure employment in the United States due to her physical condition. She says that without the applicant's income, her family would fall into poverty. She says that if she finds employment, her child care costs would climb significantly without the applicant to help her. The applicant submits evidence that he alone earned \$34,500 in 2013 and that he and his wife had a combined income of \$48,000 in 2012. Their federal income tax form for 2013 shows an income of \$51,149. The applicant asserts that their income places them just above the federal poverty-guidelines level for a family of seven and that the family needs his financial contribution.

The applicant's wife also says the applicant assists her with raising their children and that she cannot take care of them by herself. She explains that as a last resort, she could ask her family for help, but her sister-in-law is unable to help and she has not spoken to her two siblings who also live in Minnesota for years. Addressing hardship to their children, the applicant's wife says that they would likely suffer from poverty and separation from the applicant with long-term ramifications.

The evidence submitted to establish that the applicant's wife is physically and emotionally unable to work is limited to her own statement and that of the applicant. The medical evidence does not address her physical or emotional ability to work. Moreover, the psychological evaluation documents the applicant's wife's self-reported symptoms and history, including that she stopped working in 2013 due to leg pain and weakness.

Relying on the Government of Canada's report about immigrant labor force statistics, the applicant states that unemployment of refugees in Canada is approximately 40 percent. Because the record establishes that he has been a Canadian citizen for approximately 20 years, since 1995, it is unclear that these statistics apply to him or that he still would be classified as a refugee. The applicant has not shown that he would be unable to financially assist his family from Canada, in the event of his removal. The applicant does not provide evidence concerning any other types of hardship his spouse may experience if she remains in the United States and he is removed to Canada.

While the record establishes that the applicant's wife will experience emotional hardship if she remains in the United States, the applicant does not provide evidence to establish that, considered cumulatively with other types of hardship, including financial hardship, her hardship would be extreme. The evidence, therefore, considered in the aggregate, does not establish the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

Although the depth of concern over the applicant's inadmissibility is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the

availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The applicant has not established extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether he merits a waiver as a matter of discretion.

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.