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

U.S. Citizenship and Immigration Services

H5

[redacted]

DATE: DEC 12 2011 Office: BALTIMORE, MD FILE: [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]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of The Gambia 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 obtaining an immigration benefit through fraud or the willful misrepresentation of a material fact. The record reflects that 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, U.S.C. § 1182(i), in order to reside in the United States.

The District Director found that the applicant had failed to establish that the bar to her admission would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the District Director*, dated July 7, 2009.

On appeal, counsel asserts that the District Director erred as a matter of law in determining that the applicant had not met her burden to establish extreme hardship to her spouse. Counsel contends that the evidence submitted by the applicant, when taken cumulatively, establishes that her U.S. citizen spouse would suffer extreme hardship if she is refused admission and has to depart the United States. *Form I-290B, Notice of Appeal or Motion,* dated July 28, 2009; *see also counsel's brief,* dated August 27, 2009.

The record includes, but is not limited to, counsel's brief; a statement from the applicant's spouse; statements from a friend of the applicant's spouse and the President of the Islamic Jamaat Cultural Foundation & Institute; a psychological evaluation of the applicant's spouse; a letter concerning the economic impacts of the applicant's removal; documentation of the applicant and her spouse's home ownership; tax records and W-2 Wage and Tax Statements relating to the applicant and her spouse; a letter from the applicant's employer; bank statements, insurance statements and bills; notices of past due utility payment; school transcripts for the applicant's spouse from Montgomery College; and country conditions information on The Gambia. 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, that:

> (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 reflects that the applicant entered the United States on June 19, 2000, using a passport belonging to another person. In that the applicant obtained admission to the United States with a passport and visa belonging to another person, she procured an immigration benefit under the Act through fraud or the willful misrepresentation of a material fact and is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

> (1) 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 a VAWA self-petitioner, 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. Hardship to an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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 United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 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*, 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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

On appeal, counsel asserts that the denial of the applicant's waiver request will result in financial, spiritual and psychological hardship for her spouse as well as the loss of career opportunities. Counsel states that the applicant's removal would result in the loss of 40 percent of the family's income and that the applicant's spouse relies on her income to pay their mortgage and other financial obligations. Without her income, counsel contends, the applicant's spouse will either face the foreclosure on their house or be required to sell it at a loss. Counsel also states that the applicant takes good care of her and her spouse's children, providing them with the help they need. He asserts that if the applicant is removed from the United States, her spouse would have to hire a babysitter for his children, which will increase his financial burden, and reduce the amount of time he spends with his children. Counsel also contends that the applicant's spouse would have to give up his dream of becoming a nurse. He further states that the applicant's spouse's mental health would be deeply affected to the point that he might not be able to care for his family. Counsel claims that the applicant's spouse will suffer extreme spiritual hardship because the applicant and her spouse are members of the Muslim religion and marriage is so important to the religion that it is declared to be one half of one's faith. He contends that separating the applicant from her spouse will not only scar him but will also affect his ability to perform as the head of the household.

In an undated statement, the applicant's spouse states that the applicant is a devoted wife and mother, that she cares about the family, and that his family will be traumatized if she is removed from the United States. The applicant's spouse asserts that he cannot raise his children alone and maintain his current workload, that he will have to hire a full-time and a part-time babysitter to help raise his children, which will increase his financial burden. He contends that the financial burden of paying the mortgage, the babysitters and other expenses associated with raising children will place an extreme burden on him. The applicant's spouse also asserts that his children will suffer without their mother because he will be working two jobs to financially support the family and that his older daughter will not be able to get help with her homework.

An undated statement from [redacted] indicates that in order for the applicant's spouse to follow and practice the teachings of Islam, he must live under the same roof as his wife and children. [redacted] states that separating the applicant from his spouse would not only scar him, but will also affect his religious duties, which will result in extreme hardship to him because he is a faithful Muslim.

In support of the psychological hardship of separation, the record includes an April 27, 2008 psychological evaluation of the applicant's spouse, prepared by [redacted] Psychologist. [redacted] indicates that she interviewed the applicant's spouse on April 15, 2008. Based on that interview, [redacted] reports that the applicant's spouse is suffering from symptoms of Major Depressive Disorder – DSM-IV 296.30 as a result of the potential removal of the applicant. [redacted] indicates that the applicant's spouse has difficulty sleeping, concentrating, is in a sad mood and is constantly worried. She indicates that if the applicant is removed from the United States, her spouse's condition would worsen and seriously impede his daily functioning and his ability to work and care for his family. [redacted] also asserts that the applicant's children would be adversely affected if separated from their mother due to her inadmissibility, and that the children would be subjected to symptoms of severe separation anxiety. [redacted] recommends that the applicant's spouse receive a psychiatric evaluation for possible medication.

In support of the financial hardship of separation, the record includes an October 16, 2008 letter from [redacted], a Certified Financial Planner, who asserts that the applicant provides about 40 percent of her family's income. [redacted] states that if the applicant is returned to The Gambia, her spouse would suffer extreme and unusual hardship due to the loss of her financial support in paying for the family mortgage, utility bills, and insurance. He indicates that the ensuing financial impacts would include foreclosure on the applicant's spouse's home because he would not be able to make the mortgage payments on his own income, and that he would also find it difficult to pay for health insurance for himself and his children. [redacted] asserts that if the applicant's spouse is removed to The Gambia, she would not be able to find employment there and that her spouse would be "forced" to support her in The Gambia, as well as support his family in the United States.

The record also includes the applicant's and her spouse's 2006 tax return; the applicant's Earnings and Leave Statement for 2007; the settlement agreement for their home purchase in 2004; insurance statements, dated in 2008; copies of notices for past due electric bills, dated August 14, September 12,

November 13, and December 12, 2007, and March 14, 2008; and copies of insurance payments, dated in 2008.

Having reviewed the evidence submitted in support of the preceding hardship claims, the AAO does not find the applicant's spouse would experience extreme hardship if the waiver application is denied and he remains in the United States. Although the input of any mental health professional is respected and valuable, the AAO notes that [redacted] evaluation of the applicant's spouse fails to provide the type of detailed mental health analysis normally associated with a psychological evaluation. While [redacted] reports that the applicant's spouse suffers from symptoms of Major Depressive Disorder, the evaluation, based on a single interview with him, is largely a report of his history and offers limited information concerning the symptoms that [redacted] indicates the applicant's spouse is experiencing. Accordingly, the AAO finds [redacted] evaluation to be of limited value to a determination of extreme hardship in this proceeding.

[redacted] asserts that the applicant's children would be adversely affected if separated from their mother and that they would be subject to symptoms of severe separation anxiety such as that outlined by the psychiatrist [redacted] in his studies of children separated from their parents because of war. While the AAO acknowledges [redacted] comments regarding the anxiety suffered by children who are separated from a parent, we note that the applicant's children are not qualifying relatives under section 212(i) of the Act. Any hardship to them must, therefore, be evaluated in terms of its impact on the applicant's spouse, the only qualifying relative in this case. However, other than the statements from the applicant's spouse, the record lacks any documentation to demonstrate the hardships that the applicant's children would suffer as a result of their separation from their mother or how they would affect their father.

The AAO acknowledges the statement from [redacted] that separation from the applicant will not only scar her spouse, but will also affect his religious duties. However, we note that the record does not contain information to establish [redacted] as an individual who may speak authoritatively on the teachings of Islam regarding marriage. There is nothing in the record about [redacted] or his organization that indicates the role of president of his foundation or that makes him an expert on Islam. The record does not indicate that [redacted] personally knows the applicant's spouse or his religious beliefs. Thus, the AAO finds the statement has little probative value to a determination of extreme hardship.

The AAO notes [redacted] financial assessment. However, we do not find it supported by the record. [redacted] does not indicate what information or evidence he reviewed to reach his decision. We find insufficient financial evidence in the record to support his assertion that the applicant's removal would result in foreclosure and other financial hardship to the applicant's spouse. [redacted] asserts that the applicant would not be able to obtain employment in The Gambia because of the poor economic condition, high unemployment and discrimination against women. He also asserts that her inability to obtain employment will place additional financial burden on her spouse because he would have to maintain two homes with all the attendant costs. There is nothing in the record that establishes [redacted] as an expert on conditions in The Gambia and the record does not provide documentary evidence that would support his assertions. Going on the record without supporting documentation is not

sufficient to meet the applicant's burden of proof in this proceeding. *See 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)).

Based on the record before us, the AAO does not find the applicant to have submitted sufficient evidence to demonstrate the claimed impacts of separation on her spouse. Accordingly, the AAO does not find the applicant to have established that her spouse would experience extreme hardship if the waiver application is denied and he remains in the United States without her.

On appeal, counsel contends that the applicant's spouse cannot relocate to The Gambia because he would face persecution. The applicant's spouse also states that he cannot return to The Gambia with the applicant because he was granted political asylum in the United States after a military takeover. He claims that prior to coming to the United States, he worked for the former government of The Gambia and that he remains afraid to return to the country. The applicant's spouse also states that he does not want his children to return to The Gambia because he is concerned that they will be forced to undergo Female Genital Mutilation (FGM) because he and the applicant come from the ethnic groups that still practice FGM.

The AAO acknowledges that the applicant's spouse is from The Gambia and that he was previously granted asylum in the United States. We note that it would be a significant emotional hardship for him to go back to the same country where he previously fled due to a fear of persecution. Accordingly, when the applicant's spouse's fear of return to The Gambia, and the normal hardships of relocation are considered in the aggregate, we find that he will experience extreme hardship if he relocated to The Gambia to live with the applicant.

Although the applicant has demonstrated that her spouse would experience extreme hardship if he relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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. 880, 886 (BIA 1994). 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. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to her spouse in this case.

As the record does not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility, she has failed to establish eligibility for a waiver of inadmissibility under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.