U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

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[redacted]

Date: JAN 10 2012 Office: PITTSBURGH, PA 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 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 Field Office Director, Pittsburgh, Pennsylvania. 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 Gambia who entered the United States on November 12, 2003 with a B-2 visitor visa. He 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 procured admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Special Immigrant (Form I-360). 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.

The Field Office Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in extreme hardship. The Field Office Director denied the application accordingly. *See Decision of the Field Office Director* dated July 24, 2009.

The applicant's attorney provided a brief in support of his appeal. In the brief, the applicant's attorney asserts that the applicant will face medical, financial, mental and emotional hardships if he were to return to Gambia. The applicant's attorney also contends that the applicant has strong family ties to the United States. The applicant's attorney also indicates that the applicant's estranged wife is abusive, and the applicant fears that his return to Gambia would subject his stepchildren to physical and psychological abuse.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), briefs from the applicant's attorney, a copy of the applicant's birth certificate and passport, a marriage license and certificate, an affidavit from the applicant, an affidavit from the applicant's brother and cousin, medical documentation, country condition materials and financial documentation. 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.

The record reflects that the applicant indicated in his consular interview on November 3, 2003 and in his B-2 visa application that he was married to [redacted] On February 14, 2006, during his adjustment interview, he stated that he falsified the information regarding his marital status by claiming to be married and that he provided a fraudulent marriage certificate to the consulate in support of his visa application.

Section 212(i) of the Act provides:

> 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 an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

Sec. 204(a)(1)(A) of the Act provides:

> (iii) (I) An alien who is described in subclause (II) may file a petition with the Attorney General [Secretary] under this clause for classification of the alien (and any child of the alien) if the alien demonstrates to the Attorney General [Secretary] that--
>
> > (aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and
> >
> > (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.
>
> (II) For purposes of subclause (I), an alien described in this subclause is an alien--
>
> > (aa)(AA) who is the spouse of a citizen of the United States;

The applicant filed his Form I-360 petition as the abused spouse of a United States citizen under Section 204(a)(1)(A)(iii) of the Act. Section 212(i) authorizes the Secretary to waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien granted classification under clause (iii) of section 204(a)(1)(A) if the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified parent or child.

Accordingly, as the beneficiary of an approved I-360, the applicant must demonstrate extreme hardship to himself or another qualifying relative. 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,* 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 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.

In the present case, the applicant asserts that he would endure extreme hardship if he were to be returned to Gambia due to his inadmissibility. The applicant's attorney contends that the applicant will suffer medical, financial, mental and emotional hardships if he were to return to Gambia. With respect to his medical hardships, the applicant's attorney indicates that the applicant has a medical condition due to injuries that he sustained in two car accidents in 2007. The record contains medical reports, doctor's notes, pictures, general information regarding neck pain and proof of the applicant's insurance. However, all the records were prepared in 2007 when the accidents occurred. There was no evidence provided to demonstrate that the applicant continues to experience problems as a result of his accidents or that he has continued treatment or is currently taking medications for any prior injuries incurred in his car accidents.

With respect to the applicant's mental and emotional hardships, the record contains affidavits from the applicant and his brother. In the applicant's affidavit, he states that he has "felt depressed in the past, even though [he] has never been diagnosed." The applicant also indicates that his father dying when he was six years old and his abusive wife have caused him to "feel depressed." Further, the applicant indicates that mental illnesses are not treated in Gambia. The applicant's brother's affidavit also states that the applicant has depression. However, the record fails to provide detail regarding the applicant's emotional and psychological hardships. Further, other than the affidavits from the applicant and his brother, there is no other documentation to confirm that he is having psychological or emotional issues. Assertions are evidence and will be considered. However, going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

The applicant's attorney also asserts that the applicant will suffer financially upon his return to Gambia because he will not be able to find a job due to his family's ties to the opposition leader. In his affidavit, the applicant indicates that he worked in the past with the Ministry of Forestry and that he has a good education but that he will not be hired because of his association with the opposition in Gambia. His brother similarly states that "all simple citizens with the name of [redacted] are targets for the current government" and that the applicant also has ties to the opposition leader, so that he will be "unable to get employment." The applicant's cousin also states in his affidavit that the applicant will have difficulty in Gambia due to his relationships with the opposition leader. The record also contains country condition materials as well as one article regarding one of the applicant's alleged uncles. However, there is no indication that the applicant's family or others with the same surname have had any problems in Gambia because of their name. In fact, the one article regarding the applicant's uncle, who allegedly fled to Great Britain, does not indicate that he has left Gambia, and instead hails him as a "great democrat of our time," in what appears to be a Gambian publication. As such, the assertions of the applicant and his two relatives are unsupported by the country condition materials.

The applicant's attorney also indicates that the applicant is supporting his estranged wife, his brother and his family, and his mother who cares for orphaned children. However, there was no evidence provided to support these assertions. The applicant's attorney states that the applicant does not have the ability to document his financial support of his estranged wife and his

stepchildren because he is a victim of abuse. However, there is no explanation as to why the applicant's brother does not indicate in his letter that he is being supported by the applicant, nor why any evidence regarding his alleged support for his mother in Gambia was not provided. Further, it is unclear how much financial support the applicant is providing to his wife and stepchildren, if he is unable to provide copies of checks or other financial documentation. The applicant's attorney also indicates that he has strong family ties to the United States, including his wife, stepchildren, his brother and his family, and cousins. However, there was no documentation to indicate the status of applicant's family members in the United States. There was also no documentation to verify his relationship with his wife and stepchildren, such as letters from friends or family. Moreover, the applicant indicates that his mother lives in Gambia and that he has other family ties there. Therefore, the applicant has not met his burden of demonstrating that he will suffer extreme hardship in the event that he relocates to Gambia.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship as required under section 212(i) of the Act. As the applicant has not established extreme hardship, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.