U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAR 2 5 2013 Office: BALTIMORE, MD FILE:

IN RE:

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 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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Senegal 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 into the country through fraud or misrepresentation of a material fact. The applicant is married to a U.S. citizen, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so that she may live in the United States with her U.S. citizen spouse and children.

In a decision dated March 31, 2011, the director concluded the applicant failed to establish that her U.S. citizen husband would experience extreme hardship if she were denied admission into the United States. The waiver application was denied accordingly.

Through counsel, the applicant asserts on appeal that the evidence establishes her husband will experience extreme emotional and financial hardship if she is denied admission into the United States and that family-unity principles should be considered. Counsel also submits additional financial evidence and country-conditions information to support these assertions.

The record includes, but is not limited to, letters from the applicant's husband; psychological evaluations of the applicant and her husband; birth certificates for their children; articles about immigration issues affecting children, female genital mutilation, and country conditions in Senegal; and a legal decision from the U.S. Ninth Circuit Court of Appeals.

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 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 on August 29, 1999, the applicant procured admission into the United States by presenting a French passport that belonged to another individual. The applicant is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for procuring admission into the country through fraud or misrepresentation of a material fact. Counsel does not contest the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act states:

> (1) The Attorney General [now Secretary, Department 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.

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. 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).

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,* 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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).

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 v. I.N.S.,* 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.

The applicant's U.S. citizen spouse is her qualifying relative under section 212(i) of the Act. The record contains references to hardship the applicant's children would experience if the waiver application is denied. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. Accordingly, hardship to the children will be considered only to the extent that it causes the applicant's spouse to experience hardship.

The applicant's husband states that he will experience emotional and financial hardship if the applicant's waiver is not approved. He worries the applicant will face dangerous conditions and gender-based discrimination in Senegal, and he does not believe that either he or the applicant would find gainful employment there due to the high unemployment rate. He currently depends on the applicant's financial contributions to help cover their family's expenses. Federal tax information in the record corroborates his claim. If he remains in the United States, he would have to work more hours, despite currently working over 60 hours a week, to financially support two households, and he would be unable to care for their children. The applicant is the primary caregiver for their daughters. In addition, travel to Senegal would be expensive, and he worries about the emotional effect separation from the applicant would have on their children. He also worries their children would receive inferior medical care and education, and they could be forced to undergo female genital mutilation in Senegal. He also worries that the applicant's relatives in

Senegal would punish her and their daughters because of opposition to their marriage. He states that all of his worries are pushing him "to the brink of a nervous breakdown."

A clinical psychologist writes the applicant's husband is experiencing "severe anxiety . . . and a reduced level of psychological functioning." She concludes that he is "suffering from excessive stress and situational depression" due to his possible separation from the applicant and their children and that his symptoms would likely "dissipate" if the applicant remained in the United States.

According to country-conditions information the applicant submitted with her waiver application, women experience widespread sexual harassment, gender discrimination and rape in Senegal. *See* http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186236#wrapper. Evidence in the record also shows that one source estimates the country's unemployment rate is 48%. *See* https://www.cia.gov/library/publications/the-world-factbook/geos/sg.html.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes that the applicant's husband would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant is denied admission into the United States, and he remains in the United States. Country-conditions evidence validates the applicant's husband's safety concerns for the applicant and their daughters in Senegal. The evidence also reflects that the applicant's husband relies on her financial contributions to their household and that he suffers from excessive stress and situational depression due to the possibility of their family separating. The combined factors establish that the hardship the applicant's husband would suffer if he remains in the United States goes beyond the common results of inadmissibility, and rises to the level of extreme hardship.

The cumulative evidence also establishes the applicant's husband would experience hardship beyond that normally experienced upon removal or inadmissibility if he resides with the applicant in Senegal. The applicant's husband has been a naturalized U.S. citizen for over twelve years, and he would leave his employment of over eighteen years if he moved to Senegal. Moreover, country-conditions information confirms that finding work in Senegal would be challenging given the high unemployment rate. Additionally, reports in the record confirm the applicant's husband's safety concerns for his family.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). In evaluating whether section 212(i) of the Act relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the inadmissibility 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 and seriousness, and the presence of other evidence indicative of the 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 alien

began residency at a young age), evidence of hardship to the alien and his family if s/he is excluded and/or deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in 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). *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must:

> [B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.

Id. at 300 (citations omitted).

The unfavorable factors in this matter are the applicant's admission into the United States through willful misrepresentation of a material fact and her presence without valid immigration status. The favorable factors are her U.S. citizen spouse and children, the hardship they would face if the applicant is denied admission into the United States, and the applicant's lack of a criminal record. The AAO finds that although the immigration violations committed by the applicant are very serious in nature and cannot be condoned, taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

Upon review of the totality of the evidence, the AAO finds that the applicant has established extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act. It has also been established that the applicant merits a favorable exercise of discretion. The applicant has therefore met her burden of proving eligibility for a waiver of her ground of inadmissibility pursuant to section 212(i) of the Act. Accordingly, the Form I-601 appeal will be sustained.

ORDER: The appeal is sustained.