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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: MAR 2 8 2013 OFFICE: COLUMBUS, OH 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 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Columbus, Ohio, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Senegal who has resided in the United States since October 16, 1996, when he used a passport and a visa which did not belong to him to procure admission into the United States. 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 spouse of a U.S. Citizen and is the beneficiary of an approved 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.

The Field Office Director concluded the applicant did not demonstrate that his inadmissibility would result in extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated October 30, 2012.

On appeal, counsel submits a brief in support, financial and medical documents, a psychological evaluation, documentation on life in Senegal, a statement from the applicant and his spouse, and letters from family and friends. Counsel asserts in the brief that the applicant's spouse will suffer from psychological difficulties without the applicant present, which would negatively impact her financially. Counsel additionally contends that she would experience extreme hardship upon relocation to Senegal because she has no ties there except for the applicant, she does not know the language, she would be separated from family and friends, her health would suffer, and she would not be able to find employment there.

The record includes, but is not limited to, the documents listed above, other applications and petitions, evidence of birth, marriage, divorce, residence, and citizenship, statements from the applicant and his spouse, documentation of criminal and immigration proceedings, financial and medical records, letters from family, friends, and employers, another psychological evaluation, and photographs. 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:

> (1) The [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 applicant admits in an April 8, 2008 sworn statement that he presented a passport and a visa which belonged to his cousin, to procure admission into the United States on October 16, 1998. The record further reflects that the applicant submitted an asylum application, claiming his name was and he was a native and citizen of Mauritania, which was denied and appealed to the Board of Immigration Appeals (BIA). Inadmissibility is not contested on appeal. The AAO therefore finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation, and for having attempted to procure a benefit under the Act through fraud or misrepresentation.[1] The applicant's qualifying relative is his U.S. Citizen spouse.

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,* 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.

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[1] The record reflects that the applicant has a 2006 conviction for receiving stolen property. The Field Office Director did not address whether or not this conviction is a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Nevertheless, because the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is inadmissible under section 212(a)(2)(A)(i)(I).

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 v. I.N.S.*, 138 F.3d 1292 (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.

Counsel contends the applicant's spouse is suffering from depression due to the applicant's immigration situation. The applicant submits an evaluation by a licensed psychologist in support. Therein, the psychologist relates that her father was in the military, she was married twice before, has a daughter from each of those marriages, and has worked for the same law firm for the past 24 years. The spouse additionally reported that she provides financial assistance to her two daughters, who are 29 and 25 years of age, and she helps take care of her grandchildren. The

psychologist concluded that the spouse has some depressive symptomatology, in that she feels sad much of the time, has become more discouraged and pessimistic about the future, is more self-critical, cries often, has late insomnia, concentration difficulties, and is generally more fatigued. The psychologist moreover opines that the spouse has mild to moderate anxiety, which, along with her depression, will be exacerbated if she is separated from the applicant. The spouse claims she was the victim of multiple abusive relationships since her childhood, and that this history, along with losing the applicant, would deal an unbearable blow to her emotional state. Counsel further asserts that, in addition to emotional hardship, the applicant's spouse would experience financial difficulties without the applicant because he takes care of budget management. A budget, as well as evidence of income and copies of some monthly bills, is submitted in support.

The applicant's spouse claims she would not be able to relocate to Senegal and leave behind her family and friends. The spouse asserts she takes care of her sister, who suffered heart, kidney, and liver failure, and that she would worry about her sister if she had to move to Senegal. She states that she does not know Wolof or French, the languages spoken in Senegal, and that during her one visit to that country, she found it very difficult to communicate with his family. The spouse adds that because of the language barrier, she would be unable to find a job and meet her financial obligations. The spouse indicates she has worked for a law firm as a receptionist for 24 years, has good benefits through her job. She explains that one of those benefits is good health insurance, which she would have to give up in Senegal. The spouse expresses worry at the prospect of finding good health care in Senegal for her medical conditions. A professor of African Studies at the Ohio State University opines in a letter that the spouse may earn the minimum wage, $100 a month, if she finds a job, and that, like many Senegalese, will be unable to access adequate medical care. The professor adds that the spouse will find it hard adjusting to cultural norms in Senegal, such as expectations to submit to her husband, and the lack of respect for personal privacy.

The record establishes that the applicant's spouse would experience extreme hardship upon relocation to Senegal. The record reflects that the spouse was born in the United States, not Senegal, has lived in this country for her entire life, and does not know the French or Wolof languages. Furthermore, the applicant has submitted evidence demonstrating that the spouse would have to relinquish established family, community, and other ties in the United States if she relocated to Senegal. The record also reflects that the applicant's spouse moreover would be subject to adverse economic conditions, as well as difficulties adapting to Senegalese culture. Additionally, the applicant has submitted sufficient evidence to show that his spouse has a medical condition which may be difficult to treat given the medical facilities in Senegal.

In light of the evidence of record, the AAO finds the applicant has established that his spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Senegal.

However, the record does not demonstrate that the spouse would experience extreme hardship upon separation from the applicant. Counsel makes assertions of financial difficulties. However, despite submission of a budget statement, current paystubs, and some monthly bills, the record does not contain sufficient evidence of the spouse's or the applicant's household expenses to show that her expenses exceed her income. Furthermore, it is unclear from the record why the applicant's spouse could not take over budgeting tasks if the applicant was not present. Without details and sufficient supporting evidence of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

The record reflects that the spouse experiences some psychological difficulties due to her family history and the prospect of separation from the applicant. However, while the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to Senegal without her.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. 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 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 the qualifying relative in this case.

Furthermore, even if the applicant demonstrated that his spouse would experience extreme hardship in both scenarios, he has not shown that he merits a favorable exercise of discretion. The applicant has submitted letters from family and friends discussing his good moral character and his involvement with his church. Nevertheless, the AAO notes that not only did the applicant claim he was a different person when he applied for admission into the United States, he moreover used a completely separate identity when applying for asylum. The applicant falsely claimed he was a native and citizen of Mauritania, and attempted to procure asylum status. He was placed in removal proceedings, was ordered removed, and subsequently persisted in presenting this false identity in an appeal before the Board of Immigration Appeals (BIA). The applicant thus assumed the identity of "[redacted]" in immigration proceedings from 1997 until 2002, when the BIA affirmed its decision without a further opinion. The record moreover reflects that the applicant claimed he was [redacted] when he was arrested in 2006, but even then, still possessed identity documents in the name of [redacted] The applicant's longstanding deception with respect to his asylum application, especially when compounded with his assumption of different identities during later

criminal proceedings, belies a pattern of dishonesty and a lack of respect for United States immigration and criminal law which cannot be condoned.

The AAO therefore further finds that, even if the applicant demonstrated extreme hardship to a qualifying relative given his inadmissibility, which he has not, the applicant also does not merit a favorable exercise of discretion as required for a waiver under section 212(i) of the Act.

In proceedings for a 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.