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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: FEB 21 2014 Office: COLUMBUS, OH

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Columbus, Ohio. 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 Senegal 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 or INA), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a benefit under the Act and for procuring admission to the United States by fraud or willful misrepresentation of material facts. The applicant's spouse and two children are U.S. citizens. He seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director found that the applicant had not established his identity and had failed to establish extreme hardship to a qualifying relative. She denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Field Office Director*, dated August 12, 2013.

On appeal, counsel asserts the Field Office Director discounted evidence of the hardship that the applicant's spouse would experience if the waiver application is denied. *Brief in Support of Appeal*, received December 2, 2013. The applicant, through counsel, also submits additional evidence about Senegal on appeal.

The record includes, but is not limited to, counsel's brief, information on female genital mutilation (FGM) in Senegal, information on the and a prior AAO decision for a different applicant.[1] 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.

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 [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

[1] The decision counsel submits is an unpublished non-precedent decision. Only AAO decisions that are published and designated as precedents in accordance with the requirements discussed in 8 C.F.R. § 103.3(c) are binding on Service officers. The findings made in the other AAO decision, therefore, have no binding precedential value for purposes of the applicant's case.

> 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.

The record reflects that the applicant was admitted to the United States on February 11, 1998 with a false visa and Guinean passport issued under the name [redacted], and a different date of birth. He also stated in an addendum to his Form I-485, Application to Register Permanent Residence or Adjust Status, filed in 2012, that in 2005 he filed Form I-687, Application for Status as a Temporary Resident under Section 245A of the INA, using an assumed name, Mbaye Diouf, and a different date of birth. Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States and for seeking to procure a benefit under the Act by willful misrepresentation. The applicant does not contest his inadmissibility on appeal.

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 the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez,* 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 will first address hardship to the applicant's spouse if she relocates to Senegal. Counsel states that the applicant's spouse, a native of Senegal, is a member of an ethnic group, the [redacted] which routinely practices FGM. Counsel states that the applicant's spouse fears returning to Senegal because the threat of the applicant's spouse and daughter being mutilated is real; the Field Office Director's statement that the applicant's spouse's fear is speculative is extremely dismissive; and the applicant's spouse can never return to Senegal due to her fear. Counsel cites to country-conditions information about FGM in Senegal to support his assertions.

The applicant's spouse states she could not go to Senegal with the applicant; she is [redacted] and most [redacted] practice FGM; her mother and family would want to subject her and her daughter to FGM; and her father protected her but he is in New York now. The applicant's spouse's father states that her mother and mother's family are [redacted] they believe in FGM and he is against it; he took his daughter to the United States to protect her; and because they will try to cut his daughter and granddaughter, he will not let them "go to Africa by themselves."

According to a U.S. Department of State report about FGM in Senegal, in 1999 Senegal made the practice of FGM a criminal act. *Senegal: Report on Female Genital Mutilation (FGM) or Female*

Genital Cutting (FGC), released June 1, 2001. As of the date of the report, there were no convictions; however, several villages had abandoned the practice due to outreach efforts and with urbanization and education, the practice in Senegal has become less common. The applicant also submits information reflecting that the rate of FGM is nearly 55 percent among the and that sometimes FGM is practiced on adult women.

The record reflects that the applicant's spouse fears she and her daughter will experience pressure from her family to submit to FGM if they relocate to Senegal. However, the record is not clear that the applicant's spouse would reside near her mother or that her mother or another family member has the capability to force her to submit to this procedure. Additionally, according to country-conditions information the applicant submits, the practice is in decline in Senegal. Furthermore, the applicant submits no evidence of financial hardship upon relocation to Senegal or evidence that his spouse would experience any other type of hardship there. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that a qualifying relative would experience extreme hardship upon relocation to Senegal.

The AAO will now address hardship to the applicant's spouse if she remains in the United States. Counsel states that it would be impossible for the applicant's spouse to see the applicant as she could not travel to Senegal because of her fears related to FGM, and he could not come to the United States.

The applicant's spouse states that she could not survive without the applicant; she only has three family members in the United States, and they are unable to help care for their children; she has a history of dizziness, fainting and fatigue; it would be extremely difficult to care for the children by herself; she would not be able to see the applicant again; she refuses to bring their daughter to Senegal for fear of being subjected to FGM; their son loves the applicant very much and would not understand why he could not see him anymore; she cannot afford daycare; and she has medical bills over $1,000 that she cannot pay without the applicant. The applicant submits hospital records showing that his spouse was diagnosed with pyelonephritis on April 20, 2010, and she was treated in the emergency room for a headache on that date.

According to the applicant's spouse's brother, she relies on the applicant financially, and her brother cannot assist her, because he must provide for his own spouse. The record includes a debt collection notice for $1,390.47 with I listed as the creditor. The applicant's spouse's 2011 federal tax return reflects an income of $9,574.

The record reflects that the applicant and his spouse have a close relationship. They have two young children who the applicant's spouse would be raising without the applicant. Although the record includes evidence of some financial hardship, the record does not contain information about the applicant's salary or other income. The record also is not clear about the applicant's spouse's medical hardship, specifically whether she currently has difficulties as a result of her 2010 diagnosis of pyelonephritis. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that a qualifying relative would experience extreme hardship upon remaining in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Therefore, the AAO finds that no purpose would be served in discussing whether he merits a waiver as a matter of overall 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.