

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

[Redacted]

FILE:

[Redacted]

Office: CHICAGO, IL

Date: JUN 15 2006

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois. 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 determined 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 having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized citizen of the United States and the beneficiary of an approved 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), in order to reside in the United States with her spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 24, 2004.

On appeal, counsel contends that the decision of Citizenship and Immigration Services erred by not taking the total facts into consideration and asserts that the applicant's United States citizen spouse is likely to suffer extreme hardship as a result of the decision. *Form I-290B*, dated October 26, 2004. In support of these assertions, counsel submits a brief; an affidavit of the applicant; an affidavit of the applicant's spouse; copies of medical reports for the applicant's children and related medical information. The entire record was reviewed and considered in rendering a decision on the applicant's 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 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.

The record reflects that, on November 20, 1996, the applicant presented a fraudulent Senegal passport to United States Government officials in order to obtain admission to the United States.

A section 212(i) waiver of the bar to admission resulting from violations of section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered

by the applicant's spouse. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

Counsel contends that the applicant's spouse would suffer extreme hardship if he relocated to Senegal in order to remain with the applicant. Counsel indicates that the applicant's spouse has resided in the United States since 1993 and owns a Taxi Medallion as a result of his hard work. Counsel explains that the applicant's spouse is going to school in order to obtain a degree in electronic engineering. *Letter from [REDACTED]* dated November 17, 2004. Counsel states that Senegal does not possess high quality education and health care and the applicant's spouse would suffer as a result of depriving the couple's children of the level of health care and education to which they currently enjoy access in the United States. *Id.* In support of these assertions regarding conditions in Senegal, counsel previously submitted copies of several country condition reports for the applicant's native country. *See The World Factbook: Senegal* (printed on May 27, 2004); *USAID Africa: Senegal Country Information* (printed on May 4, 2004) ("Senegal is one of the poorest countries in the world."); *Senegal: Debt and Destruction, November 4, 2003*, 3 (printed on April 28, 2004) ("In health and education, Senegal ranks low on the continent's development scale."). Counsel contends that both of the applicant's children were born with a tied tongue. *Letter from [REDACTED]*

The record reflects that the couple's older child underwent surgery to repair the condition and underwent a subsequent surgery to remove lymph nodes on his throat. *Id.* Counsel asserts that the couple's younger child may require surgery in the future and that the proper care would be unavailable to him in Senegal imposing further hardship on the applicant's spouse. *Id.*

While relocation to Senegal may impose extreme hardship on the applicant's spouse, the record fails to establish that the applicant's spouse would suffer extreme hardship if he remains in the United States in order to maintain access to educational opportunities and quality health care for his children and residence in his adoptive country. Counsel states that separation from the applicant will destroy the family unit that the applicant and her spouse have created. *Id.* Counsel contends that it is difficult to maintain family ties when members are separated by thousands of miles. *Id.* The AAO acknowledges that separation from family members may be painful and difficult, however, counsel fails to establish that the hardship evidenced in the instant application is "extreme" in comparison to the hardship suffered by other individuals and families as a result of inadmissibility. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record reflects that the

applicant's spouse was scheduled to complete his degree in July 2005. *Affidavit of* [REDACTED] dated November 18, 2004. The record fails to specifically demonstrate that, or even to address whether, the applicant's spouse is unable to maintain employment as a taxi cab driver or an electronic engineer and provide care to his two children in the absence of the applicant.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's spouse would endure a certain amount of hardship as a result of relocation or due to separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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 application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility 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.