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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: ACCRA, GHANA

Date:

SEP 01 2009

IN RE:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B) and section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana. 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 the Gambia who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The applicant was also found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. §1182(a)(6)(C)(i), for procuring admission into the United States by fraud or willful misrepresentation on June 1, 2000. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

In a decision, dated October 20, 2008, the field office director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly.

In a Notice of Appeal to the AAO, dated November 11, 2008, counsel states that in submitting additional documentation of hardship, the applicant will show that great actual or prospective injury will result to the applicant's spouse if he is not granted a waiver to immigrate to the United States.

In the present application, the record indicates that the applicant entered the United States on June 1, 2000 by presenting a photo-switched Gambian passport in the name of "[REDACTED]". The applicant remained in the United States until June 25, 2007. Therefore, the applicant accrued unlawful presence from when his visitor's status expired under the fraudulent visa until June 25, 2007, the date of his departure from the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of his June 25, 2007 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The applicant is also admissible under section 212(a)(6)(C)(i) of the Act.

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 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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act and a section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse and/or parent of the applicant. Hardship the applicant experiences due to separation is not considered in section 212(a)(9)(B)(v) and section 212(i) waiver proceedings unless hardship to the applicant is shown to cause hardship to 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

The AAO notes that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted). Although the present case did not arise in the Ninth Circuit, separation of family will be given appropriate weight in the assessment of hardship factors.

The AAO notes further, however, that 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, 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 notes that extreme hardship to the applicant's spouse must be established in the event that she resides in the Gambia and in the event that he resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The record includes a brief from counsel, a statement from the applicant's spouse, copies of the applicant's spouse's passport showing entry and exit stamps for travel to the Gambia to visit the applicant, medical records, financial documentation, a psychological evaluation for the applicant's spouse, and a letter from the applicant's father-in-law.

In her statement, dated December 19, 2008, the applicant states that she cannot relocate to the Gambia because each time she visits the Gambia she becomes sick, with her last visit resulting in her contracting malaria. She also states that it would be hard to find employment in the Gambia and she

cannot leave her father in the United States, who has an immune deficiency problem requiring her care when he is ill. Medical records show that on October 23, 2008 the applicant's spouse was diagnosed with malaria in Atlanta, Georgia. This record states that the applicant's spouse visits the Gambia about every three months and that during her last trip she did not take the usual prophylaxis for malaria nor did she use any mosquito repellent or have mosquito netting where she stayed. The record also includes a letter from [REDACTED] dated October 29, 2008, which states that she is concerned with the applicant's spouse's emotional and physical health and that she suffered health effects due to malaria. The AAO notes that the record shows that the applicant is training to be a radiology technician and that the record does not contain any documentation to show that a person with her education and background, who takes the appropriate health precautions, could not find employment and live healthfully in the Gambia. Moreover, the applicant's father-in-law writes in a letter, dated October 28, 2008, that the applicant's spouse helps him with his everyday needs and maintenance around his home. He states that without the applicant's spouse he would have to leave his home. The record contains medical records of the applicant's father-in-law indicating he has problems with his bones, in particular his hip, but these records do not indicate that he requires the day-to-day care of the applicant's spouse to remain in the United States.

In her statement the applicant's spouse also states that in the last few months she has had to declare bankruptcy, lost their home to foreclosure, lost the financial aid she was receiving to attend school and has to send the applicant money in the Gambia for him to feed himself. The AAO notes that the record includes financial documentation supporting the assertions of the applicant's spouse, but the record does not show that these financial problems are because of the applicant's inadmissibility and/or that if the applicant were in the United States, his spouse's financial situation would be different. The record does not show how the applicant previously contributed to the household income.

Finally, the applicant's spouse states that she has been seeing a psychologist over the past few months and has been diagnosed with depression and anxiety. She states that before meeting the applicant she surrounded herself with negative influences and that her relationship with the applicant has made her respect life and try to lead a better one. The AAO notes that the record contains a psychological evaluation performed by a [REDACTED] dated November 10, 2008. Dr. [REDACTED] states that he performed a psychological evaluation on the applicant's spouse on November 6th and 7th, 2008. [REDACTED] states that the applicant's spouse understood that the purpose of their meeting was for an evaluation to demonstrate that the inadmissibility of her husband to the United States would cause her to suffer extreme hardship and that psychological treatment was not being offered. [REDACTED] finds that the applicant's spouse has moderately severe psychological disorder involving a distress syndrome of anxiety, tension, and depression along with personality traits that undermine her abilities in coping and self-caretaking. [REDACTED] states that he has urged the applicant's spouse to seek treatment for these problems especially in light of a troubled family history of depression and addiction. The AAO notes that although the input of any mental health professional is respected and valuable, the sole purpose of the submitted report, as explicitly stated in the report, was to demonstrate that the inadmissibility of the applicant to the United States would cause the applicant's spouse to suffer extreme hardship and that the evaluation was not for the purposes of receiving psychological treatment. Furthermore, [REDACTED] recommends further

treatment, but the record does not indicate that the applicant's spouse sought any treatment for her emotional problems. This inaction on the part of the applicant's spouse, without any explanation as to why further treatment was not sought calls into question the credibility of the applicant's spouse's claims. Accordingly, the conclusions reached in the evaluation are of diminished value to a determination of extreme hardship.

The AAO recognizes that the applicant's spouse is experiencing hardship, but the current record does not show that this hardship is a result of the applicant's inadmissibility or that the resulting hardship rises to the level of extreme.

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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.