

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

FILE:

Office: COLUMBUS

Date: SEP 01 2009

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Columbus, Ohio denied the instant waiver application, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Senegal, the spouse of a U.S. citizen, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The field office director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse, and denied the application. On appeal, counsel submitted additional evidence and contended that the evidence demonstrates that denial of the waiver application would cause extreme hardship to the applicant's wife. Although counsel did not appear to contest the field office director's determination of inadmissibility, the AAO will review that determination.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

On an Application to Adjust Status (Form I-485) that the applicant signed on June 28, 2008 the applicant stated that the Departure Record (Form I-94) that he was issued when he entered the United States bears the name of his brother, [REDACTED]. The notes that a USCIS officer made on that Form I-485 indicate that the applicant admitted, at an interview conducted October 27, 2008 pertinent to that application, that he had entered the United States pursuant to fraud or a material misrepresentation by using his brother's passport.

The record contains a copy of the applicant's brother's passport. The passport contains a U.S. B1/B2 visa issued in the applicant's brother's name on September 11, 2000. The passport is stamped to indicate entry into the United States on June 16, 2001

The evidence is sufficient to show that the applicant entered the United States using his brother's passport, thereby seeking an immigration benefit through fraud or a material misrepresentation, and is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The balance of this decision will address whether waiver of that inadmissibility is available and, if so, whether it should be granted.

Section 212(i)(1) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien . . .”

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant’s wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

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).

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).

The record contains a copy of the applicant’s 2005, 2006, and 2007 Form W-2 Wage and Tax Statements, which show that the applicant earned total wages of \$4,774.03, \$26,723.91, and \$29,621.57 during those years, respectively. The record contains a copy of the applicant’s wife’s 2007 W-2 form, which shows that she earned total income of \$27,656.10 during that year. The record contains a certified copy of a marriage record showing that the applicant and applicant’s wife were married on July 28, 2007 in Champaign County, Ohio.

The record contains statements from the applicant's wife dated June 23, 2008 and January 5, 2009. In the June 23, 2008 statement, the applicant's wife noted that she and the applicant met during April of 2007 and had been married less than a year. She stated that she loves him and would be devastated if he were removed to Senegal. She also stated that she was then obliged to pay almost \$340 per month for the next two and a half years to settle a bankruptcy, and that if the applicant leaves she would be obliged to give up her apartment, the classes she is taking, and anything else she could not afford. She also stated that she would lose the opportunity to have children.

She stated that, although she would want to join the applicant if he were removed, joining him in Senegal would also cause her hardship, as she would be obliged to leave her present employment, thus losing her medical benefits, which pay for her treatment for various medical issues. She further stated that she does not speak Wolof or French. She stated, yet further, that her father has diabetes, hypertension, diabetic retinopathy, and diabetic heart disease, and has had part of one leg amputated. She stated that her mother has been treated for breast cancer. She indicated that being away from her sister and parents, especially given her parents' medical conditions, would be difficult for her.

As to her medical issues, the applicant's wife stated that she has chronic daily headaches and Hashimoto's Thyroiditis, and that she requires blood tests every three months and expensive medication. The January 5, 2009 statement from the applicant's wife is almost identical to the June 23, 2008 statement, except that it appears to have been updated to indicate that the applicant's wife no longer had health insurance coverage.

Counsel provided web content pertinent to thyroid disease, including hypothyroidism. Counsel provided printouts of web content and copies of journal articles pertinent to medical conditions in Africa in general and Senegal in particular. Those documents examine various communicable diseases endemic to the region and how to avoid them. Counsel also provided a study of hypertension in Africa, but did not explain its relevance to this case.

Counsel provided a report pertinent to the quality of health care available in Niger and Senegal. The report was produced by the Health Financing and Sustainability Project funded by the U.S. Agency for International Development. The report indicates that public healthcare facilities in Senegal are inefficient and of poor quality, that they suffer from deficiencies in the qualifications of staff, routinely run out of essential drugs, and often lack critical medical supplies. The report further indicates that conditions are significantly better in private clinics, but that private medical providers also vary from each other.

Counsel also provided web content showing that the standard of living is very low in Senegal, that Africa in general has a high incidence of violence against women, and that the national language of Senegal is Wolof and its other official language is French. Counsel provided a printout showing that the applicant's wife regularly buys prescription drugs and has other medical expenses.

In a letter dated May 19, 2008, [REDACTED] a neurologist, stated that he had then been treating the applicant's wife for "a few months" for daily chronic headaches and migraines. In a letter dated December 20, 2008, [REDACTED] stated that he had then been treating the applicant's wife for chronic

daily headaches for about eight months, had been seeing her monthly, and had prescribed various medications with little effect. He also stated that, if the applicant's wife does not continue to receive treatment, her headaches may cause her severe pain and affect her daily living. He stated that he does not know what medications are available in other countries, but that the expense of doctor's visits, testing, and medication would be great. [REDACTED] did not state any basis for his assertion that treatment of the applicant's wife's headaches in Senegal would be expensive.

Counsel submitted letters, dated May 7, 2008 and December 16, 2008, from [REDACTED] of the Hilliard Rome Family Clinic in Columbus, Ohio. Those letters state that the applicant's wife is under care for hypothyroidism caused by Hashimoto's Thyroiditis and needs her blood drawn every three months. They further state that, if the applicant's wife were to discontinue her thyroid replacement therapy, she would be at risk for a heart attack, a stroke, severe depression, or some other serious consequence, including death.

Counsel submitted a report, dated June 3, 2008, from [REDACTED] a Licensed Professional Clinical Counselor (LPCC). [REDACTED] stated that the applicant's attorney referred the applicant's wife to her for evaluation, and that the applicant's wife reports that worrying about her husband's possible deportation has caused her to suffer from depression and anxiety. [REDACTED] diagnosed the applicant's wife with Adjustment Disorder with Mixed Anxiety and Depressed Mood. [REDACTED] stated that the applicant's wife is predisposed to depression and that if she is faced with another traumatic event, such as her husband's deportation, she will likely decompensate, which will complicate her mental and physical health issues.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report appears to be based on a single interview between the applicant's wife and the LPCC, transacted in order to produce a report for use in this proceeding. The record fails to reflect an ongoing relationship with the applicant's wife or any history of treatment for the disorder allegedly suffered by the applicant's wife. Moreover, the conclusions reached in the submitted report, being based on a single self-reporting interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering [REDACTED] findings speculative and diminishing the report's value in determining extreme hardship.

The record contains a report, dated January 5, 2009, from [REDACTED] a licensed clinical psychologist. [REDACTED] stated that the applicant's wife consulted with her on three occasions to obtain help dealing with her symptoms, dealing with the stress of her recent loss of her full-time job, and helping her gain control over her circumstances. [REDACTED] further stated that the applicant's wife has symptoms of Generalized Anxiety Disorder and Major Depression, Moderate. [REDACTED] observed that the applicant's wife is experiencing chronic daily headaches, in addition to migraines several times per month, has gastrointestinal difficulties, and has regained the majority of the 130 lbs. she lost after gastric bypass surgery. [REDACTED] stated that the applicant's wife is medicated for hypertension and hypothyroidism, conditions that are chronic and, absent medication, life-threatening.

██████████ expressed concern over whether the applicant's wife would be able to obtain her required medications and medical care if she went to Senegal. She stated that the applicant's wife is concerned about her parents' declining health. She further stated that, if the applicant is removed to Senegal and the applicant's wife remains in the United States, they would have to postpone having children, which might be more difficult later, given the applicant's wife's age. ██████████ stated that separation of the applicant and his wife would cause his wife's symptoms to increase, but that her accompanying him to Senegal raises other concerns for her physical and mental health.

In the appeal brief, counsel provided what he says are the applicant's wife's recurring monthly expenses and her previous year's income. The figures pertinent to those expenses are not supported by any evidence. The assertions of counsel are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Unsupported assertions of counsel are, therefore, insufficient to sustain the burden of proof.

According to the figures counsel provided, the applicant's wife was unable to pay her expenses without the applicant's assistance. Further, counsel stated that the applicant's wife has lost the full-time job that provided the majority of her income. Counsel stated, "Without the assistance of [the applicant] and his income, [the applicant's wife] would not be able to survive in the [United States]."

Counsel noted that the applicant's wife does not speak French, the official language of Senegal, or Wolof, the majority language, or any of the native minority languages, which he states would handicap her in seeking employment in Senegal.

Counsel noted that the minimum wage in Senegal is \$27 per week, and that the cost of living is \$36 per week per wage earner. Counsel stated that the applicant's wife would face extreme difficulty finding work in her professional capacity in Senegal, and that even if the applicant's wife were able to locate such employment in Senegal, she would be paid an insufficient amount to meet her expenses. Counsel did not support his assertion that the applicant's wife would be unable to locate work in her field in Senegal, nor even state what that field is.

Counsel stated,

Although some of [the applicant's wife's] expenses would be eliminated and/or lessened if she moved to Senegal, others would greatly increase. The cost of [the applicant's wife's] medications would increase drastically. In addition, [the applicant's wife] would still be required to pay rent, utilities, credit card payments and her bankruptcy payment if she relocated to Senegal. The only difference is it would be nearly impossible for her and her husband to earn enough money to pay on these debts, let alone to live in Senegal.

The only evidence in the record that the cost of the applicant's wife's medications would be drastically higher in Senegal, or that their cost would be higher at all, is the unsupported statement of

The basis for ██████████ statement is unclear. The record contains no reason to accord great

evidentiary weight to [REDACTED] assertions pertinent to the cost of medical care in Senegal. The evidence provided is insufficient to demonstrate that the applicant's wife's medications would be more expensive in Senegal than they are in the United States.

Further, although the applicant's wife would still be obliged to obtain lodging and food, the fact that the cost of living in Senegal is \$36 per week per wage earner demonstrates that lodging and food are significantly less expensive there than they are in the United States.

Although counsel merely asserted, rather than demonstrating, that no suitable employment would be available to the applicant's wife in Senegal, the AAO notes the low standard of living described in the material provided. Although counsel provided no competent evidence pertinent to the cost of medical care in Senegal, he provided evidence that the quality of medical care in Senegal is generally poor, and that the applicant's wife has medical needs that might not be met by that level of care.

Although the evidence provided by counsel fails to support many of the assertions made by counsel, the AAO finds, on the balance, that, if the applicant's wife accompanied the applicant to Senegal to live, she would experience hardship based on the very low standard of living and the relatively low standard of medical care. Further, she might suffer some hardship as a result of the different attitude toward women that appears, from the evidence provided, to prevail in Senegal. Further still, she would be separated from her parents, whose health appears to be declining. Those hardships would, in her case, considered together, rise to the level of extreme hardship.

An additional issue is whether, if the applicant is removed to Senegal, the applicant's wife would be able to remain in the United States without experiencing extreme hardship.

The evidence in the record convinces the AAO that the applicant and his wife share an emotional attachment to each other. If the applicant is removed and his wife remains in the United States, she would be obliged to forego his company. Although their emotional attachment may be no different from that found in a typical marriage, consideration of the applicant's wife's circumstances is important.

The applicant's wife noted that, without the presence of the applicant, she would be unable to produce children within her marriage. Although this is a routine, predictable result of separation due to removal of an alien, it is a hardship to be aggregated with the other hardship factors in this case.

The record contains evidence that the applicant's wife is emotionally fragile. Although, for reasons stated above, the AAO does not find the letter from [REDACTED] compelling in itself, its conclusions are similar to the January 5, 2009 letter from [REDACTED]. The applicant's wife has met with Dr. [REDACTED] on at least three occasions. While this does not qualify as a long-term professional relationship, it suggests, at least, that the applicant's wife may not have consulted with [REDACTED] merely to produce evidence for use in this proceeding.

Although [REDACTED] did not suggest that the applicant's wife would decompensate if separated from the applicant, she did indicate that the applicant's wife has symptoms of Generalized Anxiety Disorder and Major Depression, Moderate. The consequences of separation in this case appear to be greater than in an ordinary case. The potential damage that might be occasioned to the applicant's wife's mental health also appears to be greater than in a typical case. This is another hardship factor to be considered in the aggregate.

Although the record contains no evidence pertinent to the applicant's wife's budget, sufficient information is in the record that the AAO is able to make a determination pertinent to financial hardship. Prior to losing her full-time job, the applicant's wife had sufficient income. However, she has now reportedly lost her job, but retains the obligation of payments to settle a previous bankruptcy, as well as her recurring monthly expenses, whatever they are, and her medical expenses. Because the applicant's wife has lost her job, the applicant's financial assistance does appear to be critical, not only to the continuation of his wife's present lifestyle, but to maintain her at any sustainable level, which level must necessarily include continued care for her medical conditions. The financial hardship that would be occasioned to the applicant's wife in the event of his removal is another hardship factor to be considered together with the other hardship factors in this case.

The AAO therefore finds that the applicant has established that the various hardship factors, considered together, would cause the applicant's wife to suffer extreme hardship in the event that he is removed to Senegal and she remains in the United States. The applicant has therefore demonstrated that, if he is removed, his wife would suffer extreme hardship whether or not she accompanies him.

The applicant has established extreme hardship to his U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i), and waiver is therefore available. The remaining issue is whether waiver should be granted as a matter of discretion.

The offense that rendered the applicant inadmissible is a negative factor in this case. The applicant entered the United States under an assumed name, using his brother's passport. The positive factors include the harm that would be occasioned to his wife if he is removed, which harm has been sufficiently described above, and the applicant's lack of criminal record or other immigration violations. Although the applicant's misrepresentation cannot be condoned, the AAO finds that the positive factors outweigh the negative factor such that waiver should be granted as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the previous decision of the interim district director will be withdrawn and the application will be approved.

ORDER: The appeal is sustained.