

**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

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

H2

FILE: [REDACTED] Office: COLUMBUS

Date:

FEB 04 2010

IN RE: Applicant: [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:

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).

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
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 record establishes that the applicant, a native and citizen of The Gambia, procured entry to the United States in September 1998 by presenting a passport belonging to another individual. He was thus found 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 entry to the United States by fraud and/or willful misrepresentation.¹ The applicant is applying for 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 that 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 Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 10, 2007.

On appeal, counsel for the applicant submits the Form I-290B, Notice of Appeal, dated October 5, 2007 and a copy of a letter from the applicant's spouse's treating physician. The entire record was reviewed and considered in rendering this decision.

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 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 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...

¹ The applicant does not contest the field office director's finding of inadmissibility. Rather, he is requesting a waiver of inadmissibility.

A section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant cannot be considered, except as it may affect the applicant's spouse.

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 list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. 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 held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

The applicant must first establish that his U.S. citizen spouse would encounter extreme hardship were she to remain in the United States while the applicant relocates abroad due to his inadmissibility. In support, counsel has submitted a copy of a letter from the applicant's spouse's treating physician. [REDACTED] asserts that the applicant's spouse suffers from "refractory chronic daily headache and generalized musculoskeletal pain related to fibromyalgia.... She continues to require a number of prescription medications.... Her husband [the applicant] plays an important role in her care during the periods of her attacks, when she is largely incapacitated, and his absence...would in all likelihood result in the deterioration of her only recently stabilized and improved status...." *Letter from [REDACTED]* undated.

It has not been established that the applicant's spouse would suffer extreme hardship were she to remain in the United States while the applicant resides abroad. To begin, the letter from [REDACTED] is undated and does not outline the current gravity of the situation, what assistance the applicant's spouse needs from her spouse specifically, how often she is unable to care for herself, and what particular hardships she would face were the applicant unable to continue residing in the United States. Based on [REDACTED] letter, the applicant's spouse's medical conditions appear to be stabilized, and in fact, have improved, due to the applicant's spouse's use of prescription medications

Moreover, the AAO notes that the applicant's spouse has been gainfully employed full-time, as noted by her tax return for 2006 and the Form G-325A, Biographic Information; her ability to maintain long-term, gainful, full-time employment appears to confirm that despite the medical conditions referenced by [REDACTED] the applicant's spouse would not suffer extreme hardship due to her spouse's absence. In addition, the AAO notes that the applicant's spouse has two children from a previous marriage, born in 1984 and 1988, residing in the United States; it has not been established that they are unable to assist the applicant's spouse should the need arise. Finally, it has not been established that the applicant's spouse is unable to travel to The Gambia to visit the applicant on a regular basis. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Although the depth of concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. The AAO thus concludes that while the applicant's spouse may need to make alternate arrangements with respect to her care due to the applicant's inadmissibility, counsel has failed to establish that such alternate arrangements would cause her extreme hardship.

Extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. In this case, the applicant makes references to the difficulties he and his spouse would encounter were they to relocate to The Gambia due to the problematic economic situation. He notes that it would be extremely difficult for his spouse to compete with others for the few jobs in Africa. Moreover, he contends that they would not be able to afford any good housing in Africa. *Letter from [REDACTED] and [REDACTED]*

Finally, [REDACTED] contends that relocation from Columbus would worsen the applicant's spouse's condition. *Supra* at 1. Counsel has failed to provide any documentation to support these assertions. As noted above, assertions without supporting documentation do not suffice to establish extreme hardship. As such, it has not been established that the applicant's spouse would suffer extreme hardship were she to relocate to The Gambia to reside with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties

arising whenever a spouse is removed from the United States and/or refused admission. There is no documentation establishing that the applicant's spouse's hardships would be any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships she would face rises to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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. The waiver application is denied.