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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

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FILE:

Office: DETROIT, MI

Date: APR 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)

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 District Director, Detroit, Michigan and 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)(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 her last departure from the United States. The applicant files as the wife of a U.S. citizen, [REDACTED]. The applicant is the mother of three U.S. citizen children, born in 1995, 1996, and 1997. She seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her family.

The district director found that the record failed to establish that the applicant's inadmissibility would result in extreme hardship to her U.S. Citizen spouse. *Decision of the District Director*, dated August 4, 2006, at 2.¹

On August 23, 2006, former counsel filed a Notice of Appeal to the Administrative Appeals Office (Form I-290B). Former counsel asserts that the district director's decision was misguided and failed to take into account the fact that the applicant's U.S. Citizen spouse has some health related issues that expose him to extreme hardship.

At section 2 of the Form I-290B, former counsel indicates that he will send a brief and/or evidence to the AAO within 30 days. As of this date, the record does not contain this additional evidence. The record is, therefore, considered complete.

Section 301(b) of the Illegal Immigration and Immigrant Responsibility Act of 1996 Pub.L. 104-208, amended section 212(a) of the Act to render inadmissible any alien who departs the United States after accruing unlawful presence. The unlawful presence provisions of the Act became effective as of April 1, 1997. As defined in section 212(a)(9)(B)(ii) of the Act, an alien is deemed to be unlawfully present in the United States if:

The alien is present in the United States after the expiration of the period of stay authorized by the Attorney General [now Secretary of Homeland Security] or is present in the United States without being admitted or paroled.

The record indicates that the applicant entered the United States on May 28, 1994 as a B-2 visitor, authorized to remain until November 27, 1994; that she remained in the United States after her visa expired; that she properly filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on December 19, 2002, based on the Form I-130, Petition for Alien Relative, filed on her behalf by [REDACTED] and that she departed the United States after being granted Advance Parole, thereby triggering the unlawful presence provisions of the Act. Accordingly, the applicant was unlawfully

¹ The record contains a second Form I-601 filed by the applicant on November 11, 2007, which was denied by the Field Office Director, Detroit, Michigan on September 24, 2008. This denial is not before the AAO

present in the United States from April 1, 1997, the effective date of the unlawful provisions of the Act, until December 19, 2002, the date on which she filed the Form I-485.² As the applicant is seeking admission to the United States within ten years of her 2005 departure, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present for more than one year. She has filed the Form I-601, Application of Waiver of Grounds of Excludability, in order to obtain a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

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.

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 is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawful permanent resident spouse and/or parent of the applicant. Hardship that the applicant or other family members experience as a result of separation is not considered in section 212(a)(9)(B)(v) waiver proceedings, except to the extent that it causes hardship to the applicant's spouse and/or parent. In the present case, the applicant's only qualifying relative is [REDACTED]. If extreme hardship to a qualifying relative is established, a determination must then be made as to whether a favorable exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; see also *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 list of non-exclusive factors relevant

² The pendency of an affirmative application for adjustment of status is designated as a period of stay authorized by the Secretary of Homeland Security, during which an applicant does not accrue unlawful presence

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)].

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.

The AAO notes that, to establish extreme hardship, the applicant must demonstrate that her husband would suffer extreme hardship whether he relocates to Senegal to reside with her or remains in the United States without her. This is because [REDACTED] is not required to reside outside the United States based on the denial of the applicant's waiver request.

The record of this proceeding includes, but is not limited to, the following submissions in support of the assertion of extreme hardship to [REDACTED]: (1) an August 17, 2006 letter from the applicant; (2) an August 18, 2006 letter from the applicant's cousin, [REDACTED] (3) an Instruction for Home sheet issued to the applicant on May 7, 2006 by the Providence Hospital Emergency Department on May 7, 2006; (4) an August 18, 2006 letter from a physician at the Bingham Medical Center, Dearborn Michigan; and (5) a letter to the district director from prior counsel, dated June 2, 2006.

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to [REDACTED] if he relocates to Senegal. In his June 2, 2006 letter, former counsel states that [REDACTED] daughters would "very [likely] be forced to undergo circumcision by the tribal leaders." *Former Counsel's Letter of June 2, 2006*, at 2. The record, however, contains no documentary evidence demonstrating country conditions in Senegal, including the prevalence of female genital mutilation. Current counsel also states that the children would be subjected to harsh conditions if they relocated to Senegal. *Current Counsel's Letter in Support of Waiver of Ground of Inadmissibility*, undated. The

AAO again notes that the record contains no documentary evidence demonstrating the harshness of country conditions in Senegal. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, the AAO notes that the applicant's children are not qualifying relatives for the purpose of this proceeding and the record fails to address how any hardship experienced by his children would affect [REDACTED]. As the applicant has submitted no other evidence related to the impact of relocation on [REDACTED], the AAO is unable to find that he would suffer extreme hardship if he accompanied the applicant to Senegal.

The second part of the extreme hardship analysis requires that the applicant establish that [REDACTED] would suffer extreme hardship if he remains in the United States.

A letter from a Bingham Medical Center physician is submitted on appeal to show that [REDACTED] has medical conditions that require the applicant's care and attention. The letter identifies two medical conditions, namely "chronic lower back pain and arthritis." It states that [REDACTED] has been under the physician's medical care for these conditions since June 3, 2003, and that he "requires assistance with his daily personal and medical needs." The letter, however, fails to provide any specifics concerning the impact of [REDACTED] medical conditions on his ability to function on a daily basis, to identify the types or extent of the assistance that he requires or to indicate that the applicant plays a role in his care.

The applicant's letter of August 17, 2006, with its attached instruction sheet from the Providence Hospital Emergency Department, indicates that she is very concerned about how [REDACTED] remaining in the United States without her would affect his commitment to their marriage, the care of their children, his health, and the family braiding business. In her letter, the applicant's cousin, [REDACTED] states her perception that the bar to the applicant's admissibility is affecting her relationship with her husband, children, employees and customers at the family business. While the AAO notes [REDACTED]'s observations, her letter does not address the effects that the applicant's absence would have on [REDACTED] the only qualifying relative.

The AAO notes former counsel's statements that the applicant is the sole income earner for the family and that [REDACTED] is not in any physical condition to take care of the family financially. *Former Counsel's Letter of June 2, 2006*, at 2. The AAO notes, however, that the Form G-325A, Biographic Information, signed by [REDACTED] on April 28, 2008, indicates that he has been employed as a cashier from January 2003 until the present. Further, the copy of the applicant's joint U.S. Individual Income Tax Return (IRS Form 1040) for 2005 indicates that the applicant and her husband had a combined personal and business gross-income of \$31,587, from her work as a hair braider, and [REDACTED] work as a general helper. As a result, the record does not support former counsel's claim that the applicant is the sole income earner for her family. Moreover, as previously discussed, the record also fails to demonstrate the extent to which [REDACTED] medical conditions affect his ability to function on a daily basis. Therefore, the record does not establish that [REDACTED] would be unable to support himself and his children in the applicant's absence.

The AAO has considered, both individually and in the aggregate, all of the hardship factors identified in the present application, to the extent to which the evidence of record has demonstrated them. The AAO finds, however, that the record, when reviewed in its entirety and in light of the Cervantes-Gonzalez factors, cited above, does not support a finding that [REDACTED] would face extreme hardship if the applicant's waiver application were to be denied. With regard to the statements in the record about the adverse effects of family separation, the AAO acknowledges that between husband and wife or parent and child, there is a deep level of affection, as well as 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, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases. Accordingly, the applicant has not established that [REDACTED] would suffer extreme hardship if he remains in the United States while she lives outside the United States as a consequence of her inadmissibility.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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(a)(9)(B)(v) 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.