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

U.S. Citizenship and Immigration Services

H5

FILE: [redacted] Office: COLUMBUS Date: DEC 17 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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ayum Sikka
for

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 applicant is a native and citizen of The Gambia who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission into the United States by willful misrepresentation. The applicant seeks 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 wife.

The field office director concluded that the applicant 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 December 18, 2009.

On appeal, counsel for the applicant contends that the applicant's wife will suffer extreme hardship if the present where application is denied. *Statement from Counsel on Form I-290B*, submitted January 19, 2010.

The record contains statements Counsel; a birth record for the applicant; copies of tax documents for the applicant's wife; a statement from the applicant's wife; documentation of money transfers to the applicant's wife; documentation in connection with the applicant's wife's professional and academic activities; copies of receipts for rent; a copy of the applicant's wife's birth certificate, and; a copy of a marriage record for the applicant and his wife. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

> 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.

The record reflects that on or about August 29, 1998 the applicant entered the United States as a B-1 nonimmigrant visitor for business using a fraudulent passport under a false name. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for procuring admission into the United States by willful misrepresentation. The applicant does not contest his inadmissibility on appeal.

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

> (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 waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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.

Id. The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-,* 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

On appeal, counsel contends that the applicant's wife will suffer extreme hardship if the present waiver application is denied. *Statement from Counsel on Form I-290B* at 2. Counsel distinguishes the facts of the present matter with those under consideration in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), and asserts that the reasoning of the BIA in that decision should not be given weight in the applicant's case. *Id.*

Counsel previously stated that the applicant's wife has a close relationship with her extended family, all of whom reside in the central Ohio area. *Prior Statement from Counsel*, dated December 15, 2009. Counsel provided that the applicant's wife would suffer hardship should she relocate to The Gambia and become separated from her family in the United States. *Id.* at 1. Counsel stated that the applicant's wife has no family outside the United States. *Id.* Counsel cited a report from the United States Department of State to support that conditions are poor in The Gambia. *Id.* at 1-2. Counsel asserted that the applicant's wife was performing her medical assistant externship in Columbus Ohio, and that she would experience extreme difficulty finding work in her profession in The Gambia. *Id.* at 3. Counsel provided to the applicant's wife was emotionally distraught regarding the potential loss of the applicant's presence. *Id.*

The applicant's wife stated that she and the applicant were married on October 28, 2008. *Statement from the Applicant's Wife*, dated December 10, 2009. She expresses that the applicant is her source of stability, and that she has received immeasurable emotional and financial support from him. *Id.* at 1. She contends that she cannot contemplate a life without the applicant in the United States. *Id.* She states that she has no relatives in The Gambia. *Id.* She provides that she recently became a medical assistant, and that she requires an Ohio licensing thus she cannot perform her profession in The Gambia. *Id.* She indicates that she is a student starting her externship, and that she is unable to pay for her living expenses. *Id.* She explains that the applicant pays for their rent and utility bills,

and that he purchased an automobile for her. *Id.* She asserts that the applicant has afforded her the opportunity to complete her education and training, and that if he is not in United States she will be unable to meet the financial needs of her academic and young professional life. *Id.*

The applicant's wife further expressed that she would be saddened if the applicant is not permitted to remain in United States. *Id.* She indicated that they plan on having children after her training is complete, and that she is concerned regarding whether the applicant will be available for her and their future family. *Id.*

Upon review, the applicant has not shown that his wife will suffer extreme hardship should the present waiver application be denied. The applicant has not shown that his wife will endure extreme hardship should she remain in the United States without him. The applicant's wife asserted that she relies on the applicant for economic support, and that she is unable to meet her needs without him. However, the applicant has not provided any recent financial documentation for himself or his wife. The most recent documentation consists of a 2007 federal income tax return for the applicant's wife, yet the appeal was filed in January 2010 and the applicant has not updated the record with recent evidence. Nor has the applicant provided a clear account of his wife's expenses. While the applicant's wife indicated that she is unable to work while pursuing her academic and professional training, the record does not establish that she is unable to generate income concurrently with her study. Accordingly, the applicant has not established that his wife in fact relies on him for economic support or that she is unable to meet her needs in his absence.

The applicant's wife indicated that she will face emotional difficulties should she reside apart from the applicant. The AAO acknowledges that the separation of spouses often results in significant psychological difficulty. Yet, the applicant has not distinguished his wife's emotional hardship from that which is often expected when spouses reside apart due to inadmissibility.

All stated elements of hardship to the applicant's wife, should she reside in the United States without him, have been considered an aggregate. Based on the foregoing, the applicant has not shown that his wife will face extreme hardship should she remain in the United States.

The applicant has not shown that his wife will endure extreme hardship should she relocate to The Gambia. Counsel asserted that the applicant's wife will endure emotional hardship should she become separated from her family in the United States. However, the applicant has not provided any evidence to support that his wife has family in the United States, such as affidavits from her family members, birth or immigration records, or other probative documentation.

Counsel asserts that the applicant's wife will be unable to work in her field should she join the applicant in The Gambia. However, the applicant has not submitted sufficient documentation to establish that his wife's vocational training is not transferable abroad, particularly given that she works in a health-related field. Nor has the applicant cited or submitted any reports or other documentation that provides information about employment opportunities or economic conditions in The Gambia. In proceedings regarding a waiver of grounds of inadmissibility under section 212(i)(1) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361.

Counsel previously referenced human rights information from the Department of State, and asserted that the applicant's wife would face hardship due to poor conditions in The Gambia, including poor prison conditions, as well as arbitrary arrests and detentions. Counsel referenced harms against women including rape, domestic violence, sexual harassment, and employment discrimination. The AAO acknowledges that conditions are challenging in The Gambia, and that the applicant's wife would face hardships there. *2009 Human Rights Repots: The Gambia*, United States Department of State, dated March 11, 2010. However, the applicant has not shown that his wife will be subjected to many of the human rights abuses identified. *See Id.* Reports on the general conditions in The Gambia do not support that all individuals residing there face challenges that constitute extreme hardship. Without specific explanation regarding how the applicant's wife would be affected, record does not show that conditions in The Gambia will create challenges for her that rise to an extreme level.

All stated elements of hardship to the applicant's wife, should she relocate to The Gambia, have been considered an aggregate. Based on the foregoing, the applicant has not established that his wife will endure extreme hardship should she reside in The Gambia to maintain family unity.

Accordingly, the applicant has not shown that denial of the present waiver application "would result in extreme hardship" to his wife, as required for a waiver under section 212(i) of the Act. 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 the present matter, the applicant has not met his burden to prove that he is eligible for a waiver under section 212(i) of the Act. *See* Section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.