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

U.S. Citizenship and Immigration Services

#5

[redacted]

FILE: [redacted] Office: COLUMBUS, OHIO Date: JUL 0 6 2010

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 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.

Thank you,

[redacted]

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 sustained.

The applicant is a native and citizen of Mauritania who was 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a citizen of the United States. He sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The applicant submitted a timely appeal.

In the appeal notice, counsel maintains that the submitted documentation demonstrates extreme hardship to the applicant's spouse if the waiver is denied. Counsel asserts that the director failed to consider country conditions in Mauritania, and erred by applying the hardship standard of "unusually extreme hardship," instead of "extreme hardship."

The AAO will first address the finding of inadmissibility. 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.

The record reflects that on December 2, 2000, the applicant gained admission into the United States at Champlain, New York, by presenting a Senegal passport bearing the name Sy Oumar, and that the applicant indicated that he disposed of the passport after his entry. Based on the record, the AAO finds that the applicant is inadmissible to the United States under section 212(a)(6)(C) of the Act for willfully misrepresenting the material fact of his identity and eligibility for admission into the United States.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states 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.

The waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant is not a consideration under the statute, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's U.S. citizen spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship a qualifying relative pursuant to section 212(i) of the Act. 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.* at 565-566.

In *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

In rendering this decision, the AAO will consider all of the evidence in the record.

Extreme hardship to the applicant's spouse must be established in the event that she joins the applicant to live in Mauritania, and alternatively, if she remains in the United States without him. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

With regard to the applicant's wife joining the applicant to live in Mauritania, the applicant stated in an affidavit dated June 7, 2007, that he was 10 years old when his father and mother were killed in the black cleansing that occurred in Mauritania in 1989. He conveys that he was alone until a white family detained him and made him work for free. The applicant indicated that he fled from the family and went to Senegal, where he lived clandestinely until he traveled to the United States on October 7, 2000. He asserted that he did not have legal status in Senegal and was not allowed to attend school. The applicant maintained that he has a close relationship with his wife. He declared that if he were returned to Ma[redacted] life will be in jeopardy there[redacted] applicant's wife conveyed tha[redacted] stated that during her teens she had relationships with

older men who were drug dealers and were physically, sexually, and emotionally abusive. She indicated that the applicant's wife averred that she has a close relationship with her mother and the applicant, that she is worried about her husband's safety, and that she believes that her life without him would be unbearable. The applicant's wife declared that she takes care of her mother and would not want to leave her to live in Mauritania, where her husband informed her that her life would be in danger. diagnosed the applicant's wife with depressive disorder caused by her husband's immigration situation, by her recent miscarriage, and by her decision to leave her job in order to take care of her mother during her recovery from back surgery. The applicant's wife conveyed in her affidavit dated June 7, 2007, that she was born and raised in the United States and will leave behind her education, family, friends, and relatives if she relocates to She indicated concern about learning a new language, adapting to a strange environment, not having healthcare, and living in a country where she will not be safe. The U.S. Department of State Travel Warning on Mauritania stated the following:

> There is increasing activity by the terrorist group Al Qaeda in the Land of the Islamic Maghreb (AQIM) in Mauritania. On December 18, 2009, two Italian hostages were kidnapped from their vehicle near the town of Aioun. On November 29, 2009, three Spanish NGO workers were kidnapped from their vehicle while traveling from Nouadhibou to Nouakchott. On August 8, 2009, there was a suicide bombing near the French Embassy in Nouakchott. . . . The bomber is believed to have been a member of, or acting under the orders of, AQIM. On June 23, 2009, a private U.S. citizen was shot and killed in Nouakchott by individuals who were either sympathetic to or directly tasked by AQIM. In December 2007, terrorists shot and killed four French tourists and wounded a fifth near the town of Aleg in southeastern Mauritania. Two days later, terrorists killed four soldiers near the town of El Ghallaouiya in northern Mauritania. These two attacks were followed by an attack on the Israeli Embassy and an adjoining nightclub frequented by Westerners in February 2008. Terrorists killed 11 Mauritanian soldiers out on patrol approximately 40 miles from the northern town of Zouerate in September 2008. The perpetrators of these attacks are all believed to be linked to AQIM.
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> . . .
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> The Mauritanian military led a bloodless coup on August 6, 2008. International mediation resulted in the creation of a Government of National Unity that held elections on July 18, 2009. These elections were certified to have been satisfactorily free and fair. However, the possibility of political instability or of spontaneous violent protests still remains. In addition, deteriorating economic conditions could cause civil unrest. . . .

U.S. Department of State, Bureau of Consular Affairs, Travel Warning on Mauritania (December 2, 2009). The AAO notes that the applicant asserted that he was born and raised in Nouadhibou, which is where the Al Qaeda in the Land of the Islamic Maghreb (AQIM) kidnapped the nongovernmental workers from their vehicle.

The hardship factors asserted in this case are the concerns about living in danger in Mauritania, which the U.S. Department of State Travel Warning substantiates as it reveals ongoing activities of

the AQIM and the political instability of Mauritania; the applicant's spouse's inability to continue in the care of her mother as she recovers from back surgery; distress about having to learn a new language and adapt to a different environment, and be subject to inferior or nonexistent health care. When the combination of hardship factors is considered in the aggregate, the AAO finds they establish extreme hardship to the applicant's spouse if she joins the applicant to live in Mauritania.

With regard to the applicant's spouse remaining in the United States without her husband, the psychological evaluation conveys that the applicant's spouse, who endured multiple traumas in her childhood and abusive relationships during her teens, has a close and trusting relationship with her husband, with whom she has been married since February 2004.

Family separation 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 type of familial 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 otherwise 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 familial relationship involved, the hardship resulting from family separation is 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. Indeed, the specific facts of a case may dictate that even the separation of a spouse and children from an applicant does not constitute extreme hardship. In *Matter of Ngai*, for instance, the Board did not find extreme hardship because the claims of hardship conflicted with evidence in the record and because the applicant and his spouse had been voluntarily separated from one another for 28 years. 19 I&N Dec. at 247. 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.

With regard to emotional hardship of the applicant's wife in remaining in the United States without her husband, the AAO finds that, in view of the close relationship of the applicant and his wife and his wife's having to endure overwhelming trauma during her childhood and teenage years, the applicant's wife would experience extreme hardship if she remained in the United States without her husband.

The grant or denial of the above waiver does not depend only on the issue of the meaning of "extreme hardship." Once extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted. The favorable factors are the extreme hardship to the applicant's spouse if the waiver is denied. The unfavorable factors are the applicant's admission into the United States by willful misrepresentation, and any unauthorized unemployment. While the AAO cannot emphasize enough the seriousness with which it regards the applicant's immigration violations, we find that the hardship imposed on the applicant's wife as result of his inadmissibility outweighs the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, 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. The applicant has met that burden.

Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is approved.