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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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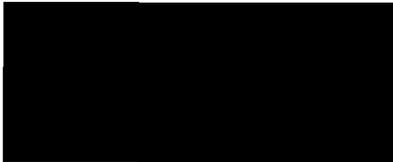
DATE: DEC 02 2011 Office: WASHINGTON, DC

FILE: [REDACTED]

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:

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 be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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, Washington, DC, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Mauritania who misrepresented his intent when entering the United States on an F-1 student visa to reside in the United States. The applicant 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). He is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), date of service July 28, 2009.

On appeal, counsel asserts that the applicant did not intend to violate his student visa, that factual conclusions by the Field Office Director were in error and that the hardship impacts on the applicant's spouse rise to the level of extreme hardship. *Attachment Form I-290B*, received August 20, 2009.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) 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 chapter is inadmissible.

The record contains, but is not limited to, the following evidence: a brief from counsel; a statement from the applicant and his spouse; evidence of the applicant's F-1 status including Forms I-20 issued to the applicant by [REDACTED] a statement from [REDACTED] May 22, 2003; documents describing [REDACTED] English as a Second Language program; photographs of the applicant, his spouse and his spouse's father; and documents filed in relation to the applicant's Form I-130, Petition for Alien Relative.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

The record indicates that the applicant was admitted to the United States as an F-1 nonimmigrant student on December 13, 2002. In June 2003 the applicant departed the United States. The applicant was again admitted to the United States in F-1 student status on September 27, 2003. However, after the applicant's return he failed to enroll in any educational classes at his designated institution, violating his F-1 immigration status. The record reflects that the applicant was terminated by his designated school on September 26, 2003 for failure to enroll.

On appeal the applicant and counsel assert that, when the applicant entered the United States on September 27, 2003, he intended to continue his education in the United States. Therefore, counsel asserts, the applicant did not misrepresent his intent when he entered the United States on September 27, 2003. In support of this, the applicant asserts that attempted to contact that school after entering the United States, but that the language classes he planned to attend had been relocated to another campus which he was unable to reach. However, there is no documentation to corroborate the applicant's assertions that he attempted to contact his school or that the language classes had been moved. The applicant also asserts that contacted a school official after he had been apprehended by Immigration and Customs Enforcement in December of 2003. However, the record does not contain evidence of any such contact. The record contains a sworn statement from the applicant made in December 2003 in which he claimed that he did not attend school after his September 27, 2003 entry because he did not have enough money to do so. This is inconsistent with the applicant's statements on appeal that he attempted to enroll in school after his entry on September 27, 2003.

Based on the record as a whole, the AAO finds that the applicant misrepresented his intent in procuring admission to the United States as an F-1 nonimmigrant student on September 27, 2003. Therefore, the AAO finds the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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

- (1) The Attorney General may, in the discretion of the Attorney General, 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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 or their children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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-Morales*, 21 I&N Dec. 296, 301 (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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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., *Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for

28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel has asserted on appeal that the applicant's spouse would experience emotional, economic and cultural hardship if she were to relocate to Mauritania with the applicant. *Statement in Support of Appeal*, received August 20, 2009. Counsel explains that the applicant's spouse has no family ties in Mauritania, does not speak the language, is not familiar with the culture and religion and would experience discrimination based on her status as a christian female. Counsel also asserts that the applicant's spouse cannot leave behind her elderly, paralyzed father because he requires constant physical caretaking which she and the applicant provide.

The AAO accepts that the applicant's spouse has family ties in the United States, no family ties in Mauritania, and that she would experience some acculturation impact due to her unfamiliarity with the language, culture and religion of Mauritania. However, the record does not contain any documentation to support the applicant's assertion that the applicant's spouse will be subject to discrimination because she is female or Christian, or that she would not have access to adequate medical care in Mauritania, or that the gap in the standard of living with the United States would be such that it constitutes an uncommon hardship impact. Nonetheless, these factors will be given some consideration when aggregating the overall impacts on the applicant's spouse due to relocation.

The record contains two photographs of the applicant's spouse with a man in a hospital bed, presumably her father. Beyond this there is no evidence to corroborate the applicant's assertions. There are no medical records, doctor's statements, hospital bills, perscription receipts or any other document which corroborates that the applicant's spouse's father is paralyzed, that he needs continuous physical assistance or that it must be the applicant's spouse that provides that assistance. Further, there is no evidence that the applicant's spouse's father cannot afford professional care if necessary or that other family members would be unable to provide any needed assistance.

When the hardship impacts asserted on relocation are considered in aggregate, the record supports that the applicant's spouse would experience some separation impact from her immediate family members in the United States and some acculturation impact since she has resided in the United States her entire life. However, there is insufficient evidence to establish that these impacts rise above the common impacts experienced by the relatives of inadmissible aliens to such a degree that they constitute extreme hardship.

On appeal counsel for the applicant asserts the applicant's spouse will also experience emotional and financial hardship due to separation from the applicant. *Statement in Support of Appeal*, received August 20, 2009. Counsel asserts that the applicant helps provide physical assistance for the applicant's spouse's elderly, paralyzed father, that the applicant's financial support allows his spouse to attend college and pay her bills, and counsel asserts that the applicant's spouse would experience emotional hardship because she loves the applicant very much.

The applicant's spouse has submitted a statement as well attesting to her feelings for the applicant, explaining how he assists her with caring for her father, and listing various financial obligations which she asserts she would not be able to pay without the applicant's assistance. *Statement of the Applicant's Spouse*, dated December 17th, 2008.

As noted above, there is no documentary evidence to establish the medical condition of the applicant's spouse's father. There is no documentation indicating that he would be unable to afford professional assistance and no explanation as to why other family members cannot care for him. Further, there is no documentary evidence in the record to corroborate the applicant's assertions regarding her financial obligations. For example, there is no documentary evidence establishing the applicant's spouse's payments for rent, car insurance, phone bills or any other listed financial obligation. Nor does the record contain any documentation of the applicant's spouse's annual income corroborating that she would be unable to meet her financial obligations. There is no evidence corroborating that the applicant has been supporting his spouse financially, or that he has covered any living costs for her such as household obligations or college tuition.

While the applicant's spouse has asserted that she will be unable to continue her education without the applicant's assistance, this is not considered an uncommon hardship factor. Without additional evidence which provides a more complete picture of the applicant's spouse's financial situation the AAO cannot make a determination that any financial impact on her would rise above the common financial impact experienced by the relatives of inadmissible aliens who remain in the United States.

Counsel for the applicant has asserted that the applicant's spouse will experience emotional hardship if the applicant is removed. While the AAO recognizes that separation can be emotionally difficult on spouses, the record does not establish that the emotional impact on the qualifying relative in this case will rise above that which is commonly experienced when spouses separate due to inadmissibility.

Even when the hardship impacts asserted upon separation are considered in the aggregate, there is insufficient evidence to establish that they rise above the common impacts to a degree that they constitute extreme hardship.

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 spouse faces extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's spouse asserts she will experience emotional and financial impacts due to his inadmissibility. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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. 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *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.