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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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**U.S. Citizenship
and Immigration
Services**



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FILE: [REDACTED] Office: LOS ANGELES, CALIFORNIA

Date: JAN 14 2011

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of the Ivory Coast and a citizen of Senegal 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 procuring an immigration benefit through fraud or willfully misrepresenting a material fact.¹ The record indicates that the applicant is married to a United States citizen and the father of three United States citizen children and one Senegalese child. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his wife and children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated December 22, 2007.

On appeal, the applicant, through prior counsel, claims that "sufficient evidence was submitted to support a finding of extreme hardship and [United States Citizenship and Immigration Services] (USCIS) abused its discretion." *Form I-290B*, filed January 25, 2008.

The record includes, but is not limited to, prior counsel's appeal brief, a statement and declaration from the applicant and his wife, a letter of support, a psychological evaluation and report on the applicant's wife, school records for the applicant's children, articles on African migrants, and a 2006 U.S. Department of State country report on Senegal. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (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)

¹ The AAO also notes that the record contains evidence that the applicant's prior marriage may not have been entered into in good faith and may have been entered into for the purpose of evading the immigration laws of the United States. Therefore, the applicant's prior marriage may be within the purview of section 204(c) of the Act. However, the Field Office Director did not find the applicant ineligible for an immigrant visa for having entered into a marriage for immigration purposes. If the Field Office Director determines that the applicant's prior marriage is within the purview of section 204(c), then the applicant would be permanently barred from benefitting from an employment-based or family-based immigrant petition. *See* 8 U.S.C. § 1154(c).

a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [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 [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...

In the present case, the record indicates that in 1992 and 1993, the applicant falsely claimed to be a Liberian refugee and presented a fraudulent Liberian birth certificate in connection with multiple applications for employment authorization. Based on these acts of misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

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 children 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 (Board) 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.

The first prong of the analysis addresses hardship to the applicant's spouse if she relocates to Senegal. In an undated declaration, the applicant states he is "very concerned about the hardship and tragedy that will befall [his] family if [he] had to be removed to Senegal and they would follow." In a brief dated February 15, 2008, prior counsel claims that USCIS did not "put enough emphasis on the extreme difficulties of life in a country like Senegal, both from a social, political and education prospective." In a psychological evaluation dated July 26, 2007, [REDACTED] states the applicant's wife "would return to a country in which she would have difficulty locating work and supporting her family." [REDACTED] reports that the applicant "had significant concerns about his ability to support [his] family" and "his income would be insufficient to meet basic living needs..., let alone afford his children educational opportunities." The applicant states his "children are all doing well in school and to uproot them and [his] wife to live in the terrible conditions of Senegal would be unbelievably tragic. The emotional impact on [his] family, not to even mention the economic, social and educational, and third world conditions of Senegal, are far reaching and devastating to even think about." The AAO notes that prior counsel submitted articles regarding the migration of Africans from west coast African countries and a 2006 U.S. Department of State country report on Senegal.

In a psychological report dated February 13, 2008, [REDACTED] diagnosed the applicant's wife with major depressive disorder and she states "[t]here are serious concerns regarding her emotional stability in the event that she is forced to live in Senegal." [REDACTED] claims that "there is a strong likelihood that the underlying depressive disorder will worsen." [REDACTED] also indicates that the applicant's wife suffers from hypothyroidism, and if she joins the applicant in Senegal, the applicant's wife "fears that she will not be able to afford medical care to control her hypothyroidism." [REDACTED] states the applicant's wife's medical condition "could further be exacerbated in the event of a sudden and drastic move to Senegal." The AAO notes the applicant's wife's physical and mental health issues.

Prior counsel states the applicant's wife's "children would be in constant danger and would lack the amenities of sanitation and a proper education should they reside" in Senegal. [REDACTED] reports that "[r]elocation to a foreign country would deprive the [applicant's] wife and children of the educational opportunities and emotional stability that the couple hoped to provide their children in the United States." [REDACTED] states "[o]f significant concern is the psychological impact of such relocation on the three children." [REDACTED] indicates that the "emotional hardship will be made more extreme by the fact that such relocation would occur during their formative years." [REDACTED] reports that "[a]part from the economic instability, [the applicant's wife] fears for her safety and the safety of her children.... [S]he is particularly concerned about the safety of her eldest daughter." The AAO notes that the applicant's children may suffer some hardship in relocating to Senegal. However, the AAO notes that the applicant's children are not qualifying relatives, and their hardship is only considered to the extent that it has an impact on the applicant's wife. Prior counsel claims that "[t]he removal of [the applicant's] children to Senegal would exasperate the mental and medical frailties of the [applicant's] spouse." Prior counsel states "[c]hildren living in that country, having been raised in this country, will

have extremely deleterious impact on the [the applicant's wife]." The AAO notes the applicant's wife's concerns regarding her children relocating to Senegal.

The AAO acknowledges the claims made by the applicant's spouse regarding the difficulties she would face in relocating to Senegal. The AAO notes that the applicant's wife has been residing in the United States for many years; however, the AAO observes that the applicant's wife is a native of Senegal and the record does not establish that she has no family ties to Senegal. However, based on the applicant's wife's lack of employment in Senegal, her physical and mental health issues, concern for her children's safety in Senegal, challenges she would face due to having to raise their three children in Senegal, and the loss of educational opportunities for their children, the AAO finds that the applicant's wife would suffer extreme hardship if she were to relocate to Senegal to be with the applicant. The applicant has not, however, established that his wife would suffer extreme hardship if she remains in the United States without him.

In a statement dated July 9, 2007, the applicant's wife states the applicant is a good father, "who always cares for a family as a whole," and he supports his family here and "back home." She claims that she was "diagnosed with a thyroid problem for 8 years and with three children, [she] need[s] help, [she] need[s] him." [REDACTED] indicates that since July 2007, the applicant's wife "has experienced a worsening in her depressive symptoms" and she diagnosed the applicant's wife with major depressive disorder. [REDACTED] reports that the applicant's wife's symptoms include "depressed mood for most of the day," no appetite, losing weight, "sleep disturbance, irritability and poor concentration." The AAO notes the applicant's wife's concerns.

The AAO acknowledges that the applicant's wife may be suffering from hypothyroidism; however, there is no medical documentation in the record establishing that she suffers from any medical condition. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). Additionally, there is no medical documentation establishing the severity of the applicant's wife's medical condition, or showing that she requires the applicant's assistance because of her medical condition. Further, the AAO has carefully considered the reports and statements regarding emotional difficulty experienced by the applicant's wife. While it is understood that the separation of spouses and children often results in significant psychological challenges, the applicant has not distinguished his wife's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. The AAO also notes that the record does not establish that the applicant's wife would be unable to support herself in the applicant's absence. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. 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 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. *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.