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



U.S. Citizenship
and Immigration
Services



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Date: AUG 09 2012

Office: ATLANTA

FILE: 

IN RE: Applicant: 

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.

Thank you,

For Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Senegal who was found to be inadmissible 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. The applicant 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.

On appeal, counsel contends that U.S. Citizenship and Immigration Services (USCIS) did not apply the preponderance of the evidence standard in the hardship determination, and failed to give proper weight to the submitted information about Senegal. Counsel asserts that the applicant provided sufficient evidence of conditions in Senegal and the unavailability of medical services. Counsel states that the applicant's wife has depression and would not receive medical treatment in Senegal. Counsel declares that the applicant's wife was recently treated for lower back pain; and the applicant's wife and children would not be able to afford health benefits in Senegal which are comparable to what they now receive. Counsel contends that the applicant's wife and children have a close relationship with the applicant, and family unity is an important hardship consideration. Counsel asserts that, with per capita income of \$500 per year, Senegal is one of the poorest countries in the world. Counsel declares that the applicant's wife will experience extreme cultural and societal differences in Senegal due to being raised in the United States and having no connection with Senegal. Counsel, citing U.S. Department of State's information about human rights and crime in Senegal, asserts that the applicant's wife's physical safety will be in jeopardy in Senegal. Counsel contends that, if the applicant returns to Senegal, the applicant's wife will have severe financial difficulties and will not be able to afford to visit him; and alternatively, if the applicant's wife relocates to Senegal, she will not be able to support herself and adjust to life there. Counsel states that Senegal's population is primarily Muslim, and the applicant's wife will be persecuted due to her religion, which isn't specified. Counsel asserts that it will take years for the applicant's wife to learn to speak the language which is spoken in Senegal, and this will mark her as a foreigner. Counsel contends that a diminished standard of living will increase the applicant's wife's anxiety and make her depressed. Counsel discusses previous cases in which the AAO found extreme hardship.

The director found the applicant's wife was inadmissible for seeking admission into the United States by fraud or willful misrepresentation. 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 director stated that, on May 7, 2002, so as to gain admission into the United States, the applicant presented a Senegal passport in the name of [REDACTED] to an immigration officer. We

agree with the director that the applicant is inadmissible under section 212(a)(6)(C) of the Act for procuring admission into the United States based on the willful misrepresentation of 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.

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 U.S. citizen wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an 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.

In rendering this decision, the AAO will consider all of the evidence in the record, which consists of an affidavit, letters, medical and financial records, invoices, photographs, and other documentation.

Counsel’s contention that the applicant’s wife and children have a close relationship with the applicant and will experience emotional hardship if separated from the applicant is consistent with the affidavit by the applicant’s wife and the medical record of [REDACTED] dated April 7, 2009, in which [REDACTED] diagnosed the applicant’s wife with depression and stated that the applicant’s wife has a history of depression or other mental health problems, for which she takes medication. [REDACTED] indicated that the applicant’s wife has increased work-related stress and is concerned about the applicant and economic issues. The record reflects that the applicant’s U.S. citizen stepdaughters were born on November 20, 2001 and October 12, 1992. We find the applicant’s wife would experience extreme hardship if she remains in the United States without her husband.

As to the hardships of the applicant’s wife in joining the applicant to live in Senegal, counsel asserts that mental health services are unavailable in Senegal; the applicant’s family will not be able to afford comparable health benefits to what they now have; the applicant’s wife will have to live in one of the poorest countries in the world and will not be familiar with the language, culture or society; the applicant’s wife will not be able to support herself and thus will have a diminished

standard of living; and the living conditions in Senegal will make the applicant's wife depressed and anxious. The applicant's wife contends in her affidavit that she will have no health coverage in Senegal and will have difficulty working and providing for her family due to Senegal's high unemployment rate. She stated that Senegal lacks doctors, medication, and running water and that her life, and that of her children, will be in danger due to kidnapping of Americans. The applicant's wife declares that her fear, stress, anxiety, and uncertainty will destroy her. The submitted U.S. Department of State documentation is in accord with counsel's assertions about substandard medical care outside of Dakar (the capital), widespread poverty, and inadequate psychiatric care and treatment in Senegal. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices – 2008: Senegal* (February 25, 2009); U.S. Department of State, Bureau of Consular Affairs, *Country Specific Information – 2009: Senegal* (July 8, 2008). The letter from the applicant's wife's employer stated that the applicant's wife has been employed as a teacher with Cobb County Schools since 1993, and the record reflects that her employer provides health benefits. Absent any evidence to the contrary, the record suggests that the applicant and his wife, who does not speak or write in French (the official language of Senegal), will experience difficulty obtaining jobs in Senegal for which they are qualified and which will provide health benefits and a sufficient wage to ensure they do not experience extreme hardship. Thus, when the asserted hardship factors are considered together, we find they demonstrate the applicant's wife will experience extreme hardship if she relocates to Senegal with her husband.

Based upon the record before the AAO, the applicant in this case establishes extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996), the Board stated that once eligibility for a waiver is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion in favor of the waiver. Furthermore, the Board stated that:

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

Id. at 301.

The AAO must then, “[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to

determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. “ *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant’s misrepresentation on May 7, 2002, and his three disorderly conduct violations, committed on April 3, 2008, August 31, 2008, and March 16, 2009.¹ The favorable factors in the present case are the positive reference regarding the applicant’s character by his spouse, friends, and stepdaughter. The AAO finds that misrepresentation is a serious violation of immigration law, nevertheless, when taken together, we find the favorable factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has now met that burden. Accordingly, the appeal will be sustained and the waiver application will be approved.

ORDER: The appeal is sustained.

¹ The director stated that on April 3, 2008, that the applicant was convicted of criminal possession of a forged instrument in the second degree in violation of section 170.25 of New York Penal Law. However, the criminal records before the AAO reflect that on April 3, 2008, the applicant was charged with criminal possession of a forged instrument in the second degree in violation of New York Penal Law and disorderly conduct in violation of section 240.20 of New York Penal Law, and that the applicant had pled guilty to, and was convicted of, disorderly conduct. Thus, the applicant was not convicted of criminal possession of a forged instrument in the second degree.