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

U.S. Citizenship and Immigration Services

H5

DATE: DEC 0 5 2012 Office: ACCRA, GHANA FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i), and section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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

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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant was also found to be inadmissible under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant is the beneficiary of an approved Petition for Alien Relative and seeks waivers of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act in order to reside in the United States with her United States citizen spouse.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of District Director* dated March 8, 2011.

The record contains, but is not limited to, statements from the applicant and the applicant's spouse, as well as financial records, various immigration applications, and a copy of a national identification card for the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (1) The [Secretary] may, in the discretion of the [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 [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 record reflects that during an interview on October 28, 2010 at the United States Consulate in Dakar, Senegal, the applicant testified that she entered the United States on August 31, 2005 with a passport and visa under the name of [redacted] U.S. Government records also identified the applicant as having entered the United States on August 31, 2005 under this name. The applicant asserted this as her true and correct identity to the Consular Officer at that time, and denied knowledge of an identity under the name [redacted] U.S. Government records and documents submitted by the applicant also indicate that she identifies herself to be [redacted] There is sufficient evidence in the record to demonstrate that the applicant willfully misrepresented material facts regarding her identity to United States government officials at various times for the purpose of gaining benefits. Based upon the foregoing, the applicant was

found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. §1182(a)(6)(C)(i). The record supports this finding, the AAO concurs in the applicant's inadmissibility under 212(a)(6)(C)(i) of the Act, and the applicant does not contest her inadmissibility under section 212(a)(6)(C)(i) of the Act on appeal.

Section 212(a)(9) of the Act provides:

> (B) ALIENS UNLAWFULLY PRESENT.-
>
> (i) In general- Any alien (other than an alien lawfully admitted for permanent residence) who-
>
> (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal, or
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> (ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.
>
> ...
>
> (v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record also reflects that the applicant accrued a period of unlawful presence in the United States. Specifically, the applicant was admitted to the United States on July 26, 1998 in F-1 student status for duration of status, but she did not attend an authorized course of study. The applicant then filed an application for asylum on September 24, 1998. During an interview with

a United States immigration officer on October 21, 1998, it was determined that the applicant was in an unlawful status based on the failure to maintain a full course of study according to the terms of her visa. The application was denied, and the applicant's subsequent appeal was denied on February 17, 2003. The applicant did not begin to accrue unlawful presence until the denial of her appeal on February 17, 2003. There is no record of applicant's departure after the denial of this appeal. Therefore, the length of unlawful presence which the applicant accrued from February 17, 2003 until her departure cannot be determined without further inquiry. However, it is clear from the record that the applicant did depart the United States sometime after the denial of her appeal. The applicant may be inadmissible under section 212(a)(9)(B)(i) of the Act, and she may require a waiver under section 212(a)(9)(B)(v) of the Act. As discussed above, the applicant requires a waiver under section 212(i) of the Act. Satisfaction of the requirements of section 212(i) of the Act will also establish eligibility for a waiver under section 212(a)(9)(B)(v) of the Act, waiving the applicant's inadmissibility under section 212(a)(9)(B)(i) of the Act. Thus, the AAO need not settle whether the applicant is inadmissible under section 212(a)(9)(B)(i) of the Act.

A waiver of inadmissibility under either section 212(i) or section 212(a)(9)(B)(v) of the Act is dependent on a demonstration that barring admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully permanent resident spouse or parent of the applicant. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver and the USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Moralez*, 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 1292 (9th Cir. 1998) (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.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship under sections 212(i) or 212(a)(9)(B)(v) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

The applicant's spouse indicates that he is finding it financially difficult to maintain two households while his wife lives in Mauritania and he remains in the United States. The applicant's spouse stated that he must also provide for his extended family in Mauritania while providing for his wife and children which does not allow him to accumulate any savings. The applicant's spouse also indicated that after a mishap which caused physical injury he still had to work on a full-time basis in order to provide for his family while paying his medical bills and managing his other living expenses in the United States. The applicant's spouse also stated that

he worries about his family living in an unsafe area where crime often occurs. The applicant's spouse indicates that he is stressed because he does not get to see his family often since he must work. He adds that he left his country for political reasons.

The applicant indicates that she is having difficulty raising her children in Mauritania without her husband's regular presence in the family. The applicant indicates that she is in fear constantly because of the crime in the neighborhood where she resides. The applicant also states they are facing financial, physical and psychological problems because of the family separation. The applicant lastly states that she works, but only makes $120 each month and cannot live in the same manner that she did in the United States with her salary.

The applicant's spouse indicates that he is finding it difficult to support two households and maintain any savings. To this end he has supplied selections of his financial documents such as letters of employment, pay stubs, bank statements and an apartment lease. However, this information alone is insufficient to support a finding that he has been unable to meet his expenses, or that the need to send money to his family in Mauritania creates significant financial difficulty.

In addition, although the applicant's spouse indicated that he fears for the safety of his family where they currently reside in Mauritania, he has also stated that they are residing with a large number of his extended family members, including his parents, and there has been no information provided regarding any specific incidents or concerns these relatives have faced. The applicant has not articulated how crime in her area will specifically affect her spouse. Moreover, the applicant was born in Mauritania and lived there until adulthood. No evidence has been submitted to indicate that she could not live in another location where there might be less concern, such as with her own family members. The applicant has also indicated that she is able to work and assist with the financial burdens, although the lifestyle is not comparable to that which she enjoyed here in the United States. However, the applicant has not shown that her reduced quality of life is elevating her spouse's challenges to an extreme level.

Although separation from one's immediate family can be a difficult challenge, the applicant has not provided sufficient evidence to demonstrate that the issues presented in this case exceed the struggles which would normally occur due to separation from a spouse, and they do not show that the qualifying relative is undergoing extreme hardship due to this separation.

The applicant also did not demonstrate extreme hardship to the qualifying relative should he relocate to Mauritania to maintain family unity. There was no specific evidence provided as to why the applicant's spouse would be unable to relocate to Mauritania. While we recognize that the qualifying relative spouse received a grant of asylum based on political opposition in that country, the applicant did not present any further information regarding a continued threat of harm or continued fear of persecution to her spouse at this time. Moreover, according to information which was presented in the record, the applicant's spouse has made several trips to Mauritania to visit the family, and there was no evidence indicating that he encountered problems during these times from any particular source. Therefore, although generally an

individual who receives political asylum may have a presumed fear of harm to return to the country from which he fled, circumstances or country conditions may change regarding these issues, and the applicant has provided no information to indicate that the qualifying relative would currently have difficulty in returning to such an extent that it would cause extreme hardship.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her United States citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion. As the applicant has not shown eligibility for a waiver under section 212(i) of the Act, she has also not shown eligibility for a waiver under section 212(a)(9)(B)(v) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.