



U.S. Citizenship
and Immigration
Services



H5

DATE: DEC 19 2012 Office: NEWARK, NJ

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A large, stylized handwritten signature in black ink, appearing to be "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey, 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 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). 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) on August 8, 2011.

On appeal, counsel for the applicant asserts that the Field Office Director did not properly apply the extreme hardship standard, and states that evidence was submitted that was sufficient to establish the applicant's spouse will experience extreme hardship. *Form I-290B*, received September 2, 2011.

The record contains, but is not limited to, the following documentation: statements from counsel, the applicant, and the applicant's spouse; birth certificates for the applicant's daughters; bank statements and tax returns; school records; and pay stubs for the applicant's husband. The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(6)(C) of the Act 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 indicates that the applicant presented the passport of another person when entering the United States on September 5, 2001, and thus entered the United States by materially misrepresenting his identity. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest inadmissibility on appeal.

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 an applicant or any 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 for the applicant asserts on appeal that the applicant’s spouse has resided in the United States for several years and that she has more ties to the United States than she does to Senegal. *Brief in Support of Appeal*, dated September 23, 2011. He states that the living conditions in Senegal are much worse than in the United States and that neither the applicant nor his spouse would be able to find employment to support themselves.

The record contains a biographical questionnaire which indicates that the applicant’s spouse’s parents are still residing in Senegal. This is inconsistent with counsel’s assertions that the applicant’s spouse does not have any ties to Senegal. With regard to the conditions in Senegal, the country reports submitted in this case do not corroborate counsel’s assertions of the conditions in Senegal, and are not sufficiently probative to demonstrate that neither the applicant nor his spouse would be able to find employment in Senegal. While the AAO acknowledges that conditions in Senegal may be more challenging than those in the United States, the applicant has not established that residence there, without other clearly articulated hardships, constitutes extreme hardship.

The applicant’s spouse asserts that she has resided in the United States for several years and would have trouble adjusting to life in Senegal. *Statement of the Applicant’s Spouse*, dated June 2011. She further states that, as a Muslim woman she would not have the same freedoms in Senegal that she has in the United States. The AAO notes that the applicant’s spouse is from Senegal. Typically, having to readjust to conditions abroad after living for a period in the United States is not considered an uncommon hardship. *See Matter of Uy*, 11 I&N Dec. 159 (BIA 1965)(concluding readjustment after living abroad not characterized as extreme since most will endure this hardship). In this case, there is nothing in the record which distinguishes any impact on the applicant’s spouse from that which is commonly experienced by the relatives of inadmissible aliens who return to their own countries of

origin. The record includes a background note on Senegal, but this document indicates that Senegal is relatively stable politically, that 95% of the population is Muslim and that the country is run by a secular government. Based on this evidence, the AAO does not find sufficient support for the applicant's spouse's claims of hardship due to her status as a Muslim woman. Her assertions of physical hardship upon relocation are not supported by the record.

Even when the hardship impacts upon relocation are considered in the aggregate, the AAO does not find them to rise above the common impacts to a degree constituting extreme hardship.

With regard to hardship upon separation, the record contains a single statement in a letter dated in June 2011 from the applicant's spouse. She states that she and her daughter rely on the applicant financially, and that without the applicant's financial assistance she will suffer a financial impact due to the applicant's removal.

While the record does include copies of tax statements and employment records, these documents are not sufficiently probative to demonstrate that the applicant's spouse will be unable to meet her financial obligations without the assistance of the applicant. There is no documentation which indicates that the applicant has previously contributed to his household financially, or that he would be able to if he remained in the United States. There is no evidence that the applicant's spouse is currently experiencing any uncommon financial hardship such as foreclosure, debt collections or utility cancellations. Without evidence which distinguishes the financial impact on the applicant's spouse from that which is commonly experienced by the relatives of inadmissible aliens who remain in the United States, the AAO cannot determine that this financial hardship is a significant factor in this case.

The record does not further articulate the basis of any hardship impacts. As such, the AAO does not find the record to contain sufficient evidence that the applicant's spouse will experience impacts, even when considered in the aggregate, rising to the level of extreme hardship due to separation.

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 he is refused admission. 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.

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ORDER: The appeal is dismissed.