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



U.S. Citizenship  
and Immigration  
Services



H5

DATE: **JAN 03 2012**

OFFICE: ACRA, GHANA

FILE: 

IN RE: 

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:

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,

for

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Acra, Ghana, and the subsequent appeal was dismissed by the Administrative Appeals Office (AAO) on appeal. The matter is now before the AAO on motion to reopen.<sup>1</sup> The motion will be denied.

The record reflects that the applicant is a native and citizen of Gambia with a date of birth of June 4, 1976. *See Form G-325, Biographic Information.* On March 27, 1997, the applicant submitted an application for a nonimmigrant visa stating that her date of birth is June 4, 1974. *See Form OF-156, Nonimmigrant Visa Application,* dated March 27, 1997. On February 11, 1999, the applicant submitted an application for a nonimmigrant visa stating that her date of birth is June 4, 1975 and that she had not previously applied for a visa. *See Form OF-156, Nonimmigrant Visa Application,* dated February 11, 1999. In a subsequent visa application refused on March 24, 1999, the applicant stated that her date of birth is April 6, 1975. *See Form OF-156, Nonimmigrant Visa Application.* Based on the applicant's attempts to procure a visa to the United States by submitting false information, the Field Office Director found the applicant to be inadmissible to the United States 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 having attempted to procure a visa to the United States by fraud or willful misrepresentation. 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. The applicant is a beneficiary of an approved I-130 who seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and child.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director,* dated September 30, 2008. The AAO dismissed an appeal of the Field Office Director's decision on February 28, 2011. *See Decision of the AAO,* dated February 28, 2011.

The applicant states that her misrepresentation was an innocent mistake. The applicant further states that she has undergone hardship in her life, including female genital mutilation and doesn't want to expose her child to the same practices. The applicant's spouse asserts that he has a heart condition and is suffering from stress and depression due to his wife's absence. He also states that their marriage is vulnerable to collapse and his wife is in danger of being an outcast because she would refuse to practice female genital mutilation on their child or future children.

In support of the waiver application and appeal, the applicant submitted letters, letters from the applicant's spouse, medical record, an article concerning birth registration in Gambia, background information concerning Gambia, calling card charges, and identity documents. The entire record was reviewed and considered in rendering a decision on the appeal.

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

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<sup>1</sup> Though it is noted that the applicant's Form I-290B application indicates that he is filing an appeal, the applicant's appeal from the Field Office Director's decision has previously been dismissed by the AAO. *See Decision of the AAO,* dated February 28, 2011. Accordingly, the applicant's Form I-290B application will be treated as a motion to reopen.

(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.

Section 212(i) of the Act provides:

- (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 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 (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...

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.

The applicant’s qualifying relative in the present case is her U.S. citizen spouse. The record contains references to hardship the applicant or the applicant’s child would experience if the waiver application were denied. It is noted that Congress did not include hardship to these individuals as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant or the applicant’s child will not be separately considered, except as they may affect the applicant’s spouse.

The record reflects that the applicant is a thirty-five year-old native and citizen of Gambia. The applicant’s spouse is a thirty-nine year-old native of Gambia and citizen of the United States. The applicant’s spouse is currently residing in Cincinnati, Ohio, and the applicant is currently residing in Gambia.

The applicant and her spouse maintain that the applicant did not make any misrepresentations in her attempts to gain entry into the United States. *See Letter from* [REDACTED] dated March 18, 2011; *Letter from* [REDACTED] dated March 10, 2011. Both the applicant and her spouse assert that if the applicant attempted to make a misrepresentation, she would have been deceitful in further aspects of her identity beyond her date of birth. *Id.* In addition, the applicant and her spouse state that many individuals born in Gambia, including the applicant, have been uncertain as

to their correct date of birth. *See Letter from [REDACTED]* dated March 18, 2011; *See Letter from [REDACTED]* It is noted that this applicant did not consistently submit the same erroneous date of birth in her three denied visa applications. The applicant submitted three different and false birth dates on three separate visa applications. It is further noted that the applicant, on her second visa application, also falsely stated that she had not previously applied for a visa. *See Form OF-156, Nonimmigrant Visa Application*, dated February 11, 1999. The applicant has failed to satisfy her burden of proof and demonstrate that she is not subject to inadmissibility under section 212(a)(6)(C)(i) of the Act. Section 291 of the Act, 8 U.S.C. § 1361.

The applicant's spouse asserts that he has suffered from two heart attacks. *Id.* In support of his assertions, the applicant's spouse submitted medical records, letters concerning his prescriptions and the availability of his medications in Gambia. *See Medical Records from [REDACTED]* dated September 6, 2011; *Letter from [REDACTED]* dated March 16, 2011 and October 20, 2008; *Letter from [REDACTED]* dated March 18, 2011. The applicant's spouse's medical documentation states that he has a history of cardiac issues, such as hypertension, myocardial infarction, and CAD/Kawaski's Disease and that he should remain in an area with the requisite medical resources and medication for his conditions. *Id.* The applicant's spouse asserts that he is suffering from stress and depression because of his wife's immigration matter. *See Letter from [REDACTED]* dated August 15, 2011. The medical evidence submitted by the applicant's spouse does not contain any documentation describing the need for family assistance in his recovery. Further, the record does not contain any evidence concerning the applicant's spouse's psychological state, including a psychological evaluation or letters of support, which would support the applicant's spouse's assertions. There is also no indication that the applicant's spouse is unable to work and support himself due to his medical conditions.

The applicant's spouse states that his expenses have caused extreme financial hardship so that he is unable to consult a psychologist. *See Letter from [REDACTED]* dated March 18, 2011. It is noted that the only evidence in the record concerning the applicant's spouse's financial status is a list of phone card expenses. *See [REDACTED]* The record is otherwise devoid of information concerning the applicant's spouse's income or other expenses. Accordingly, there is no indication that the applicant's spouse is unable to maintain his financial obligations. Further, the record contains insufficient evidence to find that the applicant's spouse is suffering hardship beyond the common consequences of inadmissibility or removal due to separation from his spouse. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Further, the courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, it is not enough by itself to justify an extreme hardship determination. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility

only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of “*extreme hardship*,” Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

The applicant’s spouse asserts that he cannot relocate to Gambia because of his heart problems. See Letter from [REDACTED] dated August 15, 2011. As noted above, the applicant’s spouse submitted medical records in support of his assertions concerning his physical condition. See Medical Records from [REDACTED] dated September 6, 2011; Letter from [REDACTED] dated March 16, 2011 and October 20, 2008. The applicant’s spouse’s physician also states that due to the applicant’s spouse’s cardiac history, it is advisable for him to remain in an area with advanced medical equipment. See Letter from [REDACTED] dated March 16, 2011. Further, the applicant’s spouse submitted a letter from a clinic in Gambia stating that several of his prescription medications are not available in Gambia. See Letter from [REDACTED] dated March 18, 2011. The AAO previously determined that the applicant’s spouse would suffer extreme hardship upon relocation to Gambia due to the disruption of the consistent medical care he is receiving in the United States. See Decision of Field Office Director, dated February 28, 2011.

The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if he relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. Cf. *Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also cf. *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. 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.

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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion will be denied.

**ORDER:** The motion is denied.