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



**U.S. Citizenship
and Immigration
Services**

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Date: **MAR 26 2012**

Office: MILWAUKEE

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,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Gambia 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 having procured admission to the United States through fraud or misrepresentation. The applicant is married to a U.S. citizen through whom he is eligible to seek adjustment of his status to that of permanent resident. The applicant contests this inadmissibility finding, but also seeks a waiver pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his wife.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director*, September 30, 2009.

On appeal, counsel for the applicant asserts that USCIS erred by applying the incorrect standard in finding that applicant had not met his burden of showing undue hardship to a qualifying relative.

In support of the appeal, the applicant submits a statement and supporting documentation including, but not limited to: financial information, including tax returns and W-2s; his wife's statement; statements from the his wife's parents; letters of support; marriage, divorce, birth, and death certificates; expense receipts; education records; medical records and a summary of the qualifying relative's family medical history; photographs; and information about Gambia. The record also contains the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), and an approved Petition for Alien Relative (Form I-130), and supporting documents. The entire record was reviewed and considered in rendering this decision.

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

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)(1) of the Act provides:

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 applicant has disputed this inadmissibility, claiming that he intended to attend college and was prevented from registering by failure of his funding.¹ Although bearing the burden of establishing admissibility, the applicant has provided no documents supporting this claim. Consequently, the record contains insufficient evidence for reconsideration of the inadmissibility 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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

¹ The applicant admits starting work in Madison, Wisconsin, in May 2000 without ever enrolling in the Oklahoma university listed on his F-1 visa, claiming that his uncle failed to send money for school.

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 this case is his U.S. citizen wife. The record shows the applicant entered the United States on an F-1 student visa on January 2, 2000, and has not departed. He applied for permanent residence by filing an Application to Register Permanent Residence or Adjust Status (Form I-485) on March 2, 2005 based on his wife’s concurrently filed Petition for Alien Relative (Form I-130) and was found inadmissible for having used a student visa to enter the country when he intended, and did in fact undertake, to work.

The applicant’s wife contends she will suffer emotional and financial hardship if she remains in the United States while the applicant resides abroad due to his inadmissibility. She claims to be stressed by thoughts of possible separation from the applicant, to whom she has been married for over seven years and with whom she has a 5½ year-old daughter. She notes fearing she will become impoverished by removal of the primary wage earner from the household, worrying that her plan to have more children will be denied, and thinking that their daughter will grow up without a father.

To begin, the applicant’s wife states separation from her husband will represent loss of the friendship, moral support, love, and companionship of someone to whom she has grown ever closer during their marriage, and the applicant expresses similar sentiments. The qualifying relative asserts that the prospect of a painful loss is devastating enough that she would readily follow her husband overseas, were it not for fear of the dangers this would entail for their child. Her parents echo the concern about her ability to transition from a stable, two-parent family to being a single parent having to juggle work and child-rearing. According to the minister who provided pre-marital counseling regarding the difficulties of a union involving different religions, Christianity and Islam, the couple has managed these challenges successfully thus far; however, she worries that separation

may be more than the marriage can bear. *Statement of* [REDACTED] October 16, 2009. The applicant's wife herself reports suffering crying spells and such sadness at the thought of her husband leaving as to become fearful of having an emotional breakdown that will render her unable to care for her daughter. Further, she states being worried that loss of her husband will make her less available to assist her parents, whose advancing age has brought declining health: her father, in particular, has documented health issues and mobility limitations. Corroborating these concerns is a psychological evaluation diagnosing the applicant with an Adjustment Disorder, Depression, and Anxiety, and noting her symptoms include insomnia, energy loss, inability to concentrate, and constant worrying. The record contains documentary evidence that a doctor prescribed her both an antidepressant medication and a sleep aid. Therefore, the applicant has met his burden of establishing that his wife would suffer emotional hardship if they were separated from each other.

As for the predicted financial hardship, there is evidence that removal of the applicant's contribution will eliminate two-thirds of the couple's joint income; in 2008 terms, this would have reduced household income from nearly \$76,000 to just over \$24,000. The qualifying relative relies, in addition, on health insurance benefits provided by her husband's employer that would be lost upon his departure. The applicant's wife also fears having to support her husband economically should he be unable to find a job, due to a documented lack of employment prospects in Gambia. The combination of reduced income and increased expenses for the qualifying relative comes at a time when her parents' own employment issues make them unable to assist her financially. Therefore, her claim regarding financial burden is well supported. The applicant has submitted sufficient evidence of the couple's overall financial situation to establish that, without his continued presence in the United States, his qualifying relative will experience hardship that is extreme.

The applicant also demonstrated that his qualifying relative would suffer extreme hardship in the event that she relocated to Gambia with the applicant. She is a U.S. citizen whom the record shows has extensive ties to Wisconsin, where she was born, raised, educated, works, and currently lives. Her entire family lives there, including her daughter, parents, and a sibling. Faced with moving to Gambia, the applicant's wife expresses a number of concerns besides leaving all her relatives for a country she has never visited and where she has no ties: as a white, Christian woman, she fears moving to an African country where the primary religion is Islam and, in particular, where the applicant's family is composed of practicing Muslims who believe she converted to their faith. She worries about cultural adjustment, lack of fluency in the local Fulani language spoken by her husband's family, gender discrimination, and inaccessibility of medical care; she is also afraid her daughter will be forced to undergo the local practice of female genital mutilation (FGM). The applicant confirms that his Gambian family will not accept his wife's Christian beliefs, which is why he told them she had converted, and that he may be unable to protect his daughter from FGM if tribal elders decide it is necessary.

As documentation supports these claims, the record reflects that the cumulative effect of the applicant's wife's strong ties to the United States and absence of ties elsewhere, her lifelong residence in the United States, her health and safety concerns, and her loss of employment, were she to relocate, rises to the level of extreme. Moving to Gambia would entail leaving her family and her community for a country where communication difficulties and cultural differences will make adjustment

extremely difficult; where physical and language differences will further isolate her; and where she will be fearful for her physical safety, her financial well-being, and her daughter being subjected to a tribal practice condemned by the U.S. government but still permitted by the Gambian government. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, a qualifying relative would suffer extreme hardship were she to relocate abroad to Gambia to continue residing with the applicant.

Review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . 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).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996).

The AAO must then "balance 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 favorable factors in this matter are the extreme hardships the applicant's U.S. citizen wife and child would face if the applicant were to reside in Gambia, regardless of whether they accompanied the applicant or remained in the United States; the applicant's lack of any criminal convictions,

despite a 2002 arrest; support letters from family and community members; gainful employment in the United States; payment of taxes; and the passage of more than 12 years since the applicant's unlawful entry into the United States. The unfavorable factors in this matter are the applicant's procurement of a visa and U.S. admission by fraud, and his unlawful presence and employment here.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violations of immigration law, the AAO finds that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved.