



U.S. Citizenship  
and Immigration  
Services

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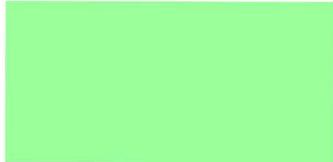
Date: **AUG 01 2014** Office: RALEIGH-DURHAM, NC

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Raleigh-Durham, North Carolina, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Togo 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 entered the United States with a Senegalese passport of another person. 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 December 10, 2013.

On appeal, counsel for the applicant asserts the Field Office Director erroneously concluded the applicant's spouse's emotional hardship did not rise above the norm, that there was no evidence of the applicant's father-in-law's medical needs, and that the director erred by failing to find financial hardship and failing to find that it would be extreme hardship for the applicant's spouse to relocate to Togo.

The record contains, but is not limited to, the following documentary submissions: statements from counsel for the applicant; statements from the applicant, her spouse and their family members; medical documents related to the applicant's spouse's father; copy of an order granting withholding of removal for the applicant; copies of residential leases and other bills and financial obligations of the applicant and her spouse; copies of tax returns and other evidence of income; and educational records related to the applicant's spouse's son.

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 used the Senegalese passport of another person to enter the United States. The applicant's use of another person's passport was a willful misrepresentation to procure entry to the United States and the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding.

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 their 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.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Counsel for the applicant asserts on appeal that the applicant’s spouse will experience extreme emotional and financial hardship if the applicant is removed. Counsel asserts that the applicant is the primary source of income for their family, and that the applicant’s spouse’s son would have to quit college if the applicant was removed. Counsel further asserts that the poor financial situation of the applicant’s spouse’s parents would make it difficult for her to support her son going to college. Counsel for the applicant also asserts that the applicant’s spouse would experience emotional hardship if the applicant were removed because “they are a strong family unit” and because of the conditions in Togo. Counsel further notes that the applicant has already been granted withholding of removal based on the personal danger to him if he were returned.

The applicant’s spouse has also submitted a letter asserting she will experience emotional and financial hardship if the applicant is removed. She states that she would have to become a single mother and that her husband provides for her living expenses. She also states the applicant has supported her son and that he will be unable to attend college and will suffer emotionally if the applicant’s waiver is not granted.

As discussed above, children are not qualifying relatives in this proceeding. As such, any hardship to children must be examined in light of their relevance to the impact on the qualifying relative. The applicant’s spouse’s son’s age is not made clear in the record, but there is no indication that he is unable to seek employment or pay for his own way through school. There is no evidence that the applicant or the applicant’s spouse have paid any money towards a college tuition or that they are paying his other financial obligations. While the record contains a letter of acceptance to a college for the applicant’s spouse’s son, the record does not make clear what the cost of attending that

school would be or who would or is paying for that college. There is insufficient evidence to establish that the applicant's son will have to leave college or that the applicant's spouse or her son would be unable to meet the financial obligations of attending college. It has not been established that any hardship the applicant's spouse's son will experience will cause hardship to his mother, the only qualifying relative.

With regard to the financial impact of separation, counsel acknowledges that the applicant's spouse earned \$33,087 in 2012, he states that earning an income above the poverty guideline should not be dispositive of a financial hardship determination. Counsel asserts that the applicant's spouse's income is not adequate for her to support herself and her son who is going to college. As noted previously, the record does not contain any evidence that the applicant or his spouse are paying for their son's college. While the record does contain copies of some monthly bills, indicating that the applicant and his spouse have financial obligations, there is insufficient evidence to demonstrate that she would be unable to meet her financial obligations if the applicant were removed, or that any impact on her would rise above the common financial impact of separation to a degree of extreme hardship.

Although counsel has asserted that the family bond between the applicant and her spouse are stronger than what is common among spouses, the record does not support support the distinction of the separation hardship in the applicant's case from the common separation hardship that exists among other families whose spouses or relatives are inadmissible. The record contains a brief letter from [REDACTED] stating that the applicant's spouse has been provided mental outpatient therapy and that she has been diagnosed with General Anxiety. However, this letter does not provide any meaningful distinction between the emotional hardship on the applicant's spouse from what is commonly experienced based on a separation of spouses.

The applicant's spouse has asserted that she would experience emotional hardship if the applicant had to relocate to Togo because of the dangers there. The record does contain a copy of the September 7, 2004 immigration judge's order granting the applicant withholding of removal to Togo, as well as the applicant's asylum application which states the basis upon which his withholding of removal was granted. However, it should be noted that the country conditions report is somewhat dated and the record is not clear on whether the applicant would still be at risk if he is removed. The evidence in the record is sufficient to establish that the applicant's spouse would experience an emotional impact if the applicant were removed to Togo, however, it is insufficient to establish that this emotional impact, even when considered in the aggregate with other asserted hardships, rises to the level of extreme hardship.

When the hardships upon separation are considered in the aggregate, there is insufficient evidence in the record to establish that they rise above the common impacts to a degree of extreme hardship.

With regard to hardship upon relocation, the applicant's spouse has asserted that it would be extreme hardship for her and her son to relocate to Togo because of the conditions there. As noted above, the record is not clear on the age of the applicant's son, and as such, the applicant's spouse's assertion that he would have to quit college in order to relocate to Togo is not supported by the record.

The record contains a State Department Travel Warning from 2003 which was filed as part of the applicant's asylum proceedings. Without a more detailed explanation of the conditions in Togo, or more recent materials documenting the conditions in Togo, the record is unclear on what hardship, if any, the applicant's spouse would experience upon relocation.

The record does contain medical documentation pertaining to the applicant's spouse's father. This documentation indicates he has knee problems and that he resides in North Carolina with his son. However, the record does not establish that the applicant's spouse is providing any physical, financial or other support for the applicant's spouse's father. Without evidence to establish what burden has fallen on the applicant's spouse to care for her father, the impact on the applicant's spouse from having to relocate to Togo is unclear.

While the record indicates that the applicant's spouse has family and community ties in the United States which would be severed upon relocation, there is insufficient evidence to establish, even when considered in the aggregate, that the hardships in this case are extreme.

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 the applicant is refused admission. We recognize that the applicant's spouse may experience some emotional and physical hardship as a result of separation or relocation to Togo. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. 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.

**ORDER:** The appeal is dismissed.