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



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **AUG 13 2014**

OFFICE: COLUMBUS

File: [Redacted]

IN RE:

[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:

[Redacted]

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,

Handwritten signature of Georgia Papas for Ron Rosenberg.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Columbus, denied the waiver application. The applicant, through counsel, appealed the Field Office Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. The matter is now before us on motion. The motion is granted, and the prior AAO decision is affirmed.

The record reflects the applicant is a native and 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), for having procured admission to the United States as well as for having sought to procure a benefit under the Act through willful misrepresentations. The applicant seeks a waiver of his inadmissibility to reside in the United States with his U.S. citizen spouse and children. The Field Office Director concluded the applicant failed to establish his identity and that he did not show his qualifying relative would experience extreme hardship. She denied his Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. We dismissed the applicant's appeal and affirmed the Field Office Director's decision.

On motion, counsel asserts additional documentary evidence demonstrates the economic, medical, physical, emotional, and psychological hardship the applicant's U.S. citizen spouse would experience, as a result of the applicant's inadmissibility, is extreme. *See Brief Submitted in Support of Motion to Reopen and Reconsider*, dated March 25, 2014.

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). As the applicant has submitted new documentary evidence to support his claim, the motion to reopen will be granted.

The record includes, but is not limited to: briefs; affidavits by the applicant's spouse; letters of support; documents concerning identity and relationships; employment, financial, and healthcare-related documents; photographs; an Internet article about pregnancy-induced hypertension (PIH); and reports describing conditions in Senegal. Although in her brief accompanying the applicant's motion, counsel states that the applicant's spouse requested hospital records that were not yet available, the record does not include such evidence submitted after March 25, 2014. The record therefore is considered complete as of the date of this decision. The entire record was reviewed and considered in rendering a decision on this motion.

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

(C) Misrepresentation.-

(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 Act is inadmissible.

...

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The record reflects that, upon his presentation of a Guinean passport and visa issued in another person's name, the applicant was admitted to the United States on February 11, 1998, as a B-2 non-immigrant visitor with permission to remain until August 10, 1998. The record also reflects the applicant states that he filed Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Form I-687) on March 10, 2005, using yet another name and date of birth. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States and for having sought to procure a benefit under the Act through willful misrepresentations. The applicant does not contest his inadmissibility.

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

- (1) The Attorney General [the Secretary of Homeland Security (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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant or his children 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. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296 (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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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 BIA 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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, 1293 (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.

In support of the applicant's motion, the applicant's spouse contends she would suffer economic, emotional, physical, and medical hardship in the applicant's absence as: the applicant is the family's primary breadwinner and without his salary, she would be forced to rely on government assistance

because she could not afford to pay their rent, bills, and other necessary expenses; she has not worked since February 2014, although she is applying for jobs; because the economic situation in Senegal is poor, she does not think the applicant would be able to find work there; she could not afford to travel to Senegal to visit the applicant, because the airfare costs approximately \$1,500; she and the applicant have never lived apart since their marriage, which would not likely survive a separation; the applicant is a good father and involved in their children's lives; she would be very depressed and their children would be sad in the applicant's absence; she is stressed, anxious, unable to focus on completing household tasks, and she has a hard time falling asleep because she worries about the applicant's immigration matters; the applicant also is stressed, which makes her feel sad; she has lost weight in the last few months; she would like to go to counseling, but it is not covered by her health insurance and they cannot afford the extra expense given their legal fees; her thyroid is not normal; she gets nose bleeds; about twice a month, she loses consciousness when she becomes too hot; she has been fired from two jobs after passing out while working; and serious medical complications with her second pregnancy, specifically PIH, resulted in her being hospitalized and their daughter being born two weeks early.

To corroborate claims of financial hardship to the applicant's spouse, the record includes pay stubs indicating the applicant earns an hourly rate of \$12; a year-long residential lease agreement indicating a monthly rent of \$630 commencing on November 1, 2013; billing statements; and tax returns. The applicant also submits an undated copy of the Central Intelligence Agency's World Fact Book report about Senegal, indicating the unemployment rate in Senegal is 48 percent (2007 est.) and 54 percent of the population lives below the poverty line (2001 est.).

To corroborate the claims of emotional, physical, and medical hardship to the applicant and his spouse, the record includes the aforementioned pay stubs and health insurance cards, showing the applicant's spouse and children receive healthcare benefits through the applicant's employer; a medical record indicating the applicant's spouse was diagnosed with pyelonephritis on April 20, 2010; and an Internet article about PIH. However, the record does not include evidence of the applicant's spouse's current medical or mental-health conditions, other than what has been self-reported. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). As the record does not contain details about the severity of the applicant's spouse's conditions or any treatment or assistance provided, we are not in the position to reach conclusions concerning the severity of her medical or mental-health conditions.

Though the evidence on the record is sufficient to establish the applicant serves as the family's primary breadwinner and his spouse may experience certain emotional hardships in his absence, the evidence, considered in the aggregate, does not establish the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

The applicant's spouse, a native of Senegal, indicates it would be hard for her to relocate to Senegal to be with the applicant as: her mother and the mother's family would subject her and their daughter to female genital mutilation (FGM), because her mother's family is Fulani and still practices FGM; her father lives in New York and cannot protect them from FGM; although FGM is illegal in

Senegal, women in the village would likely perform FGM on them before the police could arrive; she and the applicant have no savings to obtain their own residence and no other family members in Senegal who could assist them, so they would have to live with her mother and maternal aunt; she and the applicant likely would be unable to find work there, as they do not have college degrees; Senegal does not have adequate medical care, and payment for medical services is required before receiving care; she would not have health insurance; and she would require lifesaving medical intervention, as she and the applicant intend to have more children, and it is likely that she will suffer from high blood pressure during any future pregnancy.

The record includes evidence that the applicant's spouse has resided in the United States for almost 20 years, where she maintains close familial and community ties. Also, the U.S. Department of State, addressing FGM as an ongoing human-rights problem in Senegal, indicates:

[Female Genital Mutilation/Cutting (FGM/C)] is a criminal offense. It was not commonly inflicted on women but was widely perpetrated on girls. . . . The government collaborated with [non-governmental community] groups to educate individuals about FGM/C's inherent dangers. According to a 2011 UNFPA report on FGM/C, the government was integrating a course on FGM/C into the curriculum of all schools and colleges. To address the poor enforcement of the law, the Ministry of Justice developed a work plan to inform the public and better apply the law in collaboration with key stakeholders across 14 regions. The Ministry of Women, Family, Social Development, and Women's Entrepreneurship organized workshops across the country to encourage the application of the law.

Country Reports on Human Rights Practices for 2013, Senegal, issued February 27, 2014.

The record is sufficient to establish the applicant's spouse would suffer extreme hardship if she were to relocate to Senegal.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. 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 in 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. In re Pilch*, 21 I&N Dec. at 632-33. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to his qualifying relative in this case.

Furthermore, even if the applicant had demonstrated that his spouse would experience extreme hardship in both scenarios, he has not shown that he merits a favorable exercise of discretion. Although hardship to his spouse and children are favorable factors in his case, the unfavorable factors include his falsely claiming he was a native and citizen of Guinea resulting in his admission

to the United States on February 11, 1998; his subsequently using another identity to seek an immigration benefit for which he was not otherwise eligible in 2005; and his presenting a third identity when his spouse filed Form I-130, Petition for Alien Relative, on his behalf. The applicant's assumption of multiple identities throughout the immigration process reflects a lack of respect for U.S. immigration law that cannot be condoned.

The record does not contain sufficient evidence demonstrating that, in light of these activities, a favorable exercise of discretion is warranted. Thus, were the applicant able to establish extreme hardship to his U.S. citizen wife as a result of a denial of his waiver request, we do not find the favorable factors in the present matter to outweigh the negative ones, and thus, we would not favorably exercise the Secretary's discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion is granted. The prior decision of the AAO is affirmed.