

(b)(1)



U.S. Citizenship
and Immigration
Services

DATE: DEC 01 2014

Office: NEW YORK

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 procuring a visa and admission to the United States by fraud or willful misrepresentation of a material fact.¹ The applicant's spouse is a U.S. citizen. The applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States with his spouse.

The Acting District Director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Acting District Director*, dated December 29, 2013.

On appeal, counsel asserts that the Acting District Director erred in not finding that the applicant's spouse would experience extreme hardship, and he cites to case law related to extreme hardship. *Form I-290B, Notice of Appeal or Motion*, dated January 30, 2014. He also submits additional evidence of hardship to the applicant's spouse.

The record includes, but is not limited to, counsel's brief, statements from the applicant and his spouse, a psychological evaluation of the applicant's spouse, financial records, educational records, photographs and country-conditions information about Senegal. 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, that:

- (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 that:

- (1) The Attorney General [now Secretary of the Department 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

¹ The applicant has numerous convictions between 2000 and 2007 for unlicensed general vending, trademark counterfeiting and disorderly conduct. We will not address whether these are crimes involving moral turpitude necessitating a section 212(h) waiver, as fulfillment of the requirements of a section 212(i) waiver in this case would satisfy the requirements for a section 212(h) waiver.

[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 record reflects that the applicant was issued a U.S. visitor's visa under a false name, [REDACTED], and was admitted to the United States on May 12, 2003, with this visa.² He is therefore inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for procuring a visa and admission to the United States through willful misrepresentation of a material fact. The applicant does not contest this ground of inadmissibility.

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, in this case the applicant's spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Counsel provides a lengthy discussion of case law related to extreme hardship and compares it to the higher standard of exceptional and extremely unusual hardship. We will adjudicate the applicant's case under relevant case law addressing the extreme hardship standard. 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

² The Acting District Director's decision denying Form I-601 states he was admitted to the United States on April 21, 2000, whereas evidence in the record shows he was admitted on May 12, 2003. The analysis and outcome of this decision, however, are not affected by this discrepancy in the applicant's admission date.

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.

We will first address hardship to the applicant’s qualifying relative upon relocation to Senegal. The applicant’s spouse states that she was born in New York; she has always lived in the United States; she has never been outside of the United States; her parents and two brothers reside in the United States; she has no family in Senegal; her father suffers from seizures and would likely be unable to visit her; and she would have a difficult time finding a job as she does not speak Wolof or French. She further states that her son, who is about to begin attending grade school, will suffer greatly; and she cannot leave him in the United States, as his father has no interest in him. The record includes data related to the economic conditions in Senegal.

The record does not include evidence of the applicant’s spouse’s father’s medical issues or describe the nature of her relationship with her father. The applicant’s spouse likely would experience some difficulty in Senegal due to language issues, her ties to the United States, lack of ties to Senegal, and raising her son in a foreign country. However, the applicant provides no evidence about his own employment prospects in Senegal or his family and community ties and the extent that his family

could support his spouse and stepson if they were to relocate there with him. Based on the evidence in the record we find that there is insufficient documentary evidence of emotional, financial, medical or other types of hardship that, considered in their totality, establish that she would experience extreme hardship upon relocation to Senegal.

Addressing the hardships the applicant's spouse would experience if she remained in the United States without him, the applicant's spouse states that her son lives with her and the applicant; her son's father does not financially support him; the applicant is their sole source of financial support through his business, where she works as a cashier; and she cannot run the business in his absence.

The record includes evidence of the applicant's business, pay statements for the applicant's spouse, certificates of completion for medical-assistant courses she has taken, and a diploma equivalency for the applicant's spouse. The record includes a letter from the applicant's accountant stating that the applicant's spouse earns \$7.50 an hour and works 30 hours weekly; the accountant also states the applicant earns \$600 per week from his business. The record includes a few bills for the applicant and his spouse that do not reflect financial difficulties or hardship.

A psychologist states that the applicant's spouse grew up in a housing project; her mother had drug and alcohol issues; the applicant's spouse looked after her brothers growing up and lived with different grandparents; she was expelled from school for missing school and fighting; she had never experienced the stability and consistent emotional and financial support that the applicant provided upon marriage; the applicant assumed a parental role towards her child; he supported her in obtaining her degree and applying to cosmetology school; he pulled her out of a self-destructive path; and he has been her salvation. The psychologist states that the loss of family life that the applicant's spouse "has sought so hard to establish would be traumatizing" and amounts to extreme hardship.

Counsel asserts that one type of hardship could be enough to establish extreme hardship. The record, however, does not include sufficient evidence of one type of hardship that would amount to extreme hardship to the applicant's spouse. The record reflects that the applicant's spouse would experience some emotional and financial difficulty without the applicant. However, the record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that a qualifying relative would experience extreme hardship upon remaining in the United States.

The documentation in the record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Therefore, we find that no purpose would be served in discussing whether he merits a waiver as a matter of overall 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 appeal is dismissed.