



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

(b)(6)

Date: **JAN 08 2014**

Office: LOUISVILLE

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:

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, Louisville, Kentucky, denied the waiver application, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision affirmed.

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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or the willful misrepresentation of a material fact. She is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility in order to reside in the United States with her husband.

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 Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director*, April 16, 2013. On appeal, the AAO found the applicant had failed to show that failure to grant a waiver would impose extreme hardship on a qualifying relative. *Decision of the AAO*, September 18, 2013.

On motion, counsel asserts that extreme hardship to the applicant's spouse has been established through hardships that will be imposed upon his step-daughter due to her medical conditions if the applicant is unable to remain here. In support of the motion, the applicant's counsel provides a statement and letters not previously available from a doctor and a social worker. The record includes the supporting documents submitted with various immigration applications and petitions, a waiver application, the appeal of the waiver denial, and the current motion. 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 field office director found the applicant inadmissible for procuring admission to the United States on September 19, 1999 by presenting a passport and visa belonging to her deceased cousin and, on appeal, the AAO likewise found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act. She thus requires a waiver under section 212(i) of the Act.

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 or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband is the only qualifying relative in this case. If extreme hardship 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-Moralez*, 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 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 v. INS.*, 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.

Previously, the AAO concluded that the applicant had not addressed the hardship to her spouse from relocating to Senegal. After reviewing newly-submitted documents together with the pre-existing evidence, we find the documentary evidence offered with the motion insufficient to change our prior conclusion in this case. Although counsel asserts on motion that hardships to the applicant's husband would include not speaking the language, not being able to work, and being unable to meet financial obligations in the United States, there is no indication he has investigated employment prospects there. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In addition, evidence regarding medical hardships to the applicant's daughter from relocation to her mother's country fails to establish the situation would represent a hardship to the applicant's husband that rises to the level of extreme. Although sensitive that since their marriage the applicant's husband has started to develop a bond with his step-daughter,<sup>1</sup> there is no indication in the record that her situation would cause him hardship beyond that typically experienced by qualifying relatives who relocate due to inadmissibility of a family member. The AAO thus finds the applicant has failed to demonstrate the applicant's husband would suffer extreme hardship were he to relocate to Senegal to be with her.

Claims regarding potential emotional and physical hardship due to separation remain largely undocumented and are based on the qualifying relative's statements that he loves and needs the applicant, who cooks and cleans for him, and that it would be a great burden to lose her. No new evidence is provided to show he would incur hardship if his wife were unable to remain in the United States. Counsel's claims that the applicant's husband has hypertension that would worsen if his wife departed the country lack documentation. Although the record contains a copy of a prescription for medication used to treat high blood pressure and angina, there is no diagnosis of the

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<sup>1</sup> The record reflects that, as recently as June 2013, the applicant was sending money to support two children in Senegal, including the child whose medical condition is claimed to represent a hardship to the qualifying relative herein. See *Counsel's Brief re I-601 Appeal*, June 21, 2013. The AAO notes that the applicant failed to list any children on the Form I-485 she filed in June 2011 and, although she lists two children on her 2012 tax return, she has not provided their birth certificates and their surnames differ from her own. Based on medical documentation on the record, it appears that her daughter arrived in the United States from overseas for medical evaluation around her sixth birthday. Despite counsel's statements on Form I-290-B, it is not clear from the record where the children currently reside, or how long they resided in the United States before travelling to Senegal.

qualifying relative's specific ailment, no explanation of the nature or severity of the condition, and no statement by the treatment provider it would worsen due to the applicant's departure. The evidence on record is insufficient to establish that the applicant's husband suffers from any serious medical conditions and, if so, their severity and prognosis. Without documentary support, the assertions of counsel will not satisfy the petitioner's burden of proof. *Id.* While the AAO recognizes that the applicant would miss his wife of two years, the applicant has not established that her husband would suffer hardship beyond the common or typical result of inadmissibility or removal. There is no evidence that the applicant's husband would be unable to visit Senegal to ease the pain of separation.

The motion provides no new documentation regarding financial hardship, and the evidence on record does not demonstrate that without the applicant's contribution to household income, her husband's ability to meet his financial obligations would be impaired. Counsel asserts that the qualifying relative's low-paying job coupled with multiple child support obligations would make him unable to meet his current financial obligations and also support his wife and daughter in Senegal in the event of their departure. Documentation reflects the couple have a joint bank account that is empty, a joint residential lease obligation of \$300 monthly, and they filed separate tax returns in 2012. There is no other evidence of joint debts, jointly-paid expenses, or jointly-held assets. Evidence of the qualifying relative's child support obligations does not indicate that the applicant assists with these expenses or that her husband could not pay them without her presence. Wire transfer receipts show the applicant sent money to at least two people in Senegal during 2013. While the AAO recognizes that household income may decline as a result of separation, the evidence fails to establish that the applicant's husband will be unable to meet his financial obligations in the applicant's absence. There is no evidence of the applicant's living expenses in Senegal or her ability to meet them herself. 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)).

For all these reasons, while the AAO recognizes that the applicant's absence would cause emotional hardship to her husband, there is insufficient evidence that the cumulative effect of the emotional and financial hardships to him due to his wife's inadmissibility would rise to the level of extreme. The AAO concludes based on the evidence provided that, were her husband to remain in the United States without the applicant due to her inadmissibility, he would not suffer hardship beyond those problems normally associated with family separation.

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 husband will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's husband's situation, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law. Having again found the applicant statutorily ineligible for relief under the Act, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

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*NON-PRECEDENT DECISION*

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In proceedings for application for waiver of grounds of inadmissibility, 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 and, accordingly, the prior decision of the AAO will be affirmed.

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