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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
20 Massachusetts Avenue NW
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



[REDACTED]

Date: **JUN 09 2014** Office: LOUISVILLE

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,

for 

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 AAO granted a motion to reopen and reconsider, and affirmed the underlying decision. The applicant has filed a new motion, which is now before the AAO. The motion will be granted and the underlying decision dismissing the appeal will be 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 denial of the waiver would impose extreme hardship on a qualifying relative. *Decision of the AAO*, September 18, 2013. On the initial motion, the AAO again concluded the applicant had not shown extreme hardship to a qualifying relative. *Decision of AAO (MTR)*, January 8, 2014.

On a second motion, counsel continues to assert that the AAO failed to properly weigh the hardship evidence. Counsel provides medical letters, listings of jobs in Senegal, and country condition information to supplement evidence previously submitted to support the claim that the applicant's husband will experience extreme hardship because of his step-daughter's medical conditions if the applicant is unable to remain here. The record includes the supporting documents submitted with various immigration applications and petitions, a waiver application, the appeal of the waiver denial, the initial motion, 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. On appeal and prior motion, the AAO likewise found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act. On this motion, inadmissibility is not at issue, and the applicant 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.

Counsel claims that the applicant’s husband lacks skills required for jobs available in Senegal, does not speak the local language, and would thus be unable to find suitable employment overseas. The record contains no statement from the applicant’s husband regarding his language ability, current job and income, or evidence of his education and employment history, and 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). Further, beyond the qualifying relative’s statement that he has grown close to his step-daughter, there is no evidence regarding how he will be affected if she moves to Senegal with him and her mother. Evidence regarding medical hardships to the applicant’s daughter from relocation to her mother’s country thus fails to establish that the situation would represent a hardship to the applicant’s husband that rises to the level of extreme. As the record does not show he would experience hardship beyond that typically experienced by qualifying relatives who relocate due to the inadmissibility of a family member, the AAO finds the applicant has failed to demonstrate her husband would suffer extreme hardship by relocating to Senegal to be with her.

The applicant offers no new evidence to show her husband would incur emotional, physical, or financial hardship if she were unable to remain in the United States. Regarding his past statements that it would be a burden to lose the wife he loves and who cooks and cleans for him, the AAO previously noted that they fail to establish hardship that exceeds the normal consequence of family separation. New medical and school records for the applicant’s daughter suggest that she and the applicant are living in Michigan, and thus call into question whether the care and support by the applicant for the qualifying relative is ongoing, as the evidence suggests that they are living apart.¹ The evidence on record is also insufficient to establish that the applicant’s husband suffers from any

¹ In addition, the statement of a social worker at the hospital treating the applicant’s daughter calls the applicant a single parent.

serious conditions and no indication he 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.

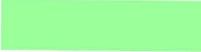
Counsel asserts that the applicant's husband would be unable to adequately care for his step-daughter due to her medical conditions, but the applicant offers no evidence supporting this claim. Documentation shows that the applicant's daughter is hearing impaired and requires prescription glasses, but fails to address any special care being provided outside the classroom setting, where she receives special instructional services due to her hearing problem. New evidence indicating that the applicant's daughter is attending school in the Detroit area, where she is also a patient of the [REDACTED] of Michigan and of an area medical doctor, suggests that she and the applicant are living in Michigan. Although the AAO acknowledges the medical evaluations of the applicant's daughter, there is no evidence that either the applicant or her husband deliver care beyond that which is usual and customary in a parent-child relationship or that the qualifying relative would be unable to do so in the applicant's absence.² Nor is there any evidence to support the claim that the qualifying relative will be unable to provide for his step-daughter, either if she remains in the United States or if she accompanies the applicant. 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, the record contains insufficient evidence that the cumulative impact of the emotional and financial hardships to him due to his wife's inadmissibility would rise to the level of extreme whether or not the applicant's step-daughter remains here. 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 pursuant to applicable law, does not support a finding that a qualifying relative will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record indicates 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 acknowledges his contention that the applicant's absence will be difficult for him, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law. As we again find 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.

² The record does not contain evidence regarding the specific caretaker duties performed by the applicant that her husband would be unable to assume.

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NON-PRECEDENT DECISION

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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 and, accordingly, the prior decision of the AAO will be affirmed.

ORDER: The motion is granted and the prior decision dismissing the appeal is affirmed.