



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF A-G-

DATE: NOV. 5, 2015

APPEAL OF PHILADELPHIA FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of Senegal, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Philadelphia Field Office, denied the application. The matter is now before us on appeal. The appeal will be sustained.

The Applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or misrepresentation. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse and children.

In a decision dated October 2, 2014, the Director determined that the Applicant had not established extreme hardship to her qualifying relative and denied the waiver application accordingly.

On appeal the Applicant submits a brief. The entire record was reviewed and considered in rendering this decision.

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

- (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:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [Secretary] that the refusal of

(b)(6)

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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 on December 21, 1997, the Applicant attempted to procure entry to the United States using a fraudulent passport in the name of another person and was ordered removed under that name. The record further reflects that the Applicant was subsequently issued a B-1/B-2 visa under her name and entered the United States on December 5, 1999. The record shows that on Form I-485, Application to Adjust Status and at an interview based on that application the Applicant denied her previous attempted entry and subsequent removal. Based on this information the Director found the Applicant inadmissible for fraud or misrepresentation. On appeal the Applicant has not contested the finding that she is inadmissible under section 212(a)(6)(C) 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. 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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

The record contains references to hardship the Applicant's children, born in [REDACTED] would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the Applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the Applicant's children will not be separately considered, except as it may affect the Applicant's spouse.

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. *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.

On appeal the Applicant asserts that her spouse cannot raise the children alone as he has a demanding job that supports the entire family. The Applicant further maintains that long-term separation from her would cause her spouse extreme hardship and would destroy their family. She states that in 1996 her spouse fled Burundi, where he was traumatized and lost his family, and was granted asylum in the United States, where he has found peace. She maintains that she and her sons are his only family and losing a second family would be extreme hardship.

In a declaration dated October 19, 2012, the Applicant’s spouse states that without the Applicant he could not work and raise three children. He contends that he is financially responsible for the children, and that without the Applicant he would be unable to raise them while working full-time to make ends meet.

The documentation in the record establishes that the Applicant's spouse is the sole financial provider for the family. The documentation also evidences that the Applicant's spouse was granted asylum in the United States. Were the Applicant to relocate abroad, her spouse would have to become primary caregiver to three young children, while financially providing for the family, without the Applicant's daily presence and support. Such a predicament would cause the Applicant's spouse extreme hardship. We therefore find that the Applicant has established that her spouse would experience extreme hardship were he to remain in the United States while the Applicant relocates abroad as a result of her inadmissibility.

We also find the record to establish that the Applicant's spouse would experience extreme hardship if he were to relocate to Senegal to reside with the Applicant. The Applicant states that her spouse has no ties in Senegal, does not speak the main languages there, and his ethnic group is not represented. In his declaration the Applicant's spouse maintains that he lost almost all of his relatives to civil war in Burundi, and that the United States is the only place he can see himself living. He further contends that he does not speak any of the languages of Senegal and does not know how to find work as he does not know anyone there. The Applicant cites country information submitted to the record that shows Senegal with high unemployment and asserts that Senegal's low economic standards are far below the United States, and with a lack of employment prospects it is doubtful her spouse can find work. She also states that country information shows Senegal has a low adult literacy rate, an average of eight years of school, and health standards far lower than the United States. She further asserts that her children are in school so their education would be interrupted if they relocated with her and her spouse.

The record establishes that the Applicant's children are natives and citizens of the United States and are integrated into the United States lifestyle and educational system. The Board of Immigration Appeals (BIA) found that a fifteen year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). We find *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the Applicant's children at this stage of their education and social development to relocate to Senegal would constitute extreme hardship to them, and by extension, to the Applicant's spouse, the only qualifying relative in this case. We find that the record reflects that the cumulative effect of the spouse's family ties and length of residence in the United States; the loss of employment and property if he were to relocate abroad; the concerns for his well-being in Senegal; the unfamiliarity with the country, culture, customs, and language; and the hardship to his children rises to the level of extreme if he were to relocate to Senegal to reside with the Applicant.

A review of the documentation in the record, when considered in its totality, reflects that the Applicant has established that her U.S. citizen spouse would suffer extreme hardship were the Applicant unable to reside in the United States. Accordingly, we find that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by

regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). This office must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardship the Applicant's U.S. citizen spouse and children would face if the Applicant were to relocate to Senegal, regardless of whether they accompanied the Applicant or stayed in the United States; the Applicant's community ties; home ownership; and the Applicant's apparent lack of a criminal record. The unfavorable factors in this matter are the Applicant's fraud or willful misrepresentation, as detailed above, the Applicant's removal in 1997, and periods of unlawful presence while in the United States. Although the Applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted.

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 been met.

**ORDER:** The appeal is sustained.

Cite as *Matter of A-G-*, ID# 14083 (AAO Nov. 5, 2015)