



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

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

MATTER OF A-N-

DATE: OCT. 1, 2015

APPEAL OF COLUMBUS FIELD OFFICE DECISION

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

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

The Director found that the Applicant did not establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly.

On appeal, the Applicant asserts that his spouse would experience extreme hardship if his waiver application is denied.

The record includes, but is not limited to, the Applicant's brief, the Applicant's spouse's statement, financial records, a psychological evaluation, and country-conditions information about Gambia. The entire record was reviewed and considered in arriving at a decision on 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 [Secretary] that the refusal of admission to the United States of such

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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 filed for and received a nonimmigrant visa application with a false date of birth. He then procured admission to the United States with the aforementioned nonimmigrant visa. The Applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for procuring a visa and admission to the United States by willful misrepresentation of a material fact. The Applicant does not contest his inadmissibility on appeal.

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-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 U.S. 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

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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 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.

We will first address hardship to the Applicant’s spouse upon relocation to Gambia. The Applicant states that his spouse was born in the United States to U.S. citizen parents; her siblings were born in New York; she does not speak Wolof; and she will lose educational opportunities in Gambia. The psychologist who evaluated the Applicant’s spouse on December 22, 2014, states that she speaks Soninke and she will be enrolled in [REDACTED]

The Applicant states that his spouse’s health and well-being will be at risk due to the dangerous environment in Gambia. The Applicant states that Gambia has a limited health care system, a litany of infectious diseases, and sanitation problems. The Applicant’s spouse states that giving up the benefits of the U.S. medical system and moving to Gambia is a horrifying thought. The psychologist states that poverty would be an added psychological stressor and it would be difficult to continue her psychological treatment in Gambia.

The Applicant asserts that female genital mutilation (FGM) is a cultural ritual and the specter of this is frightening and unsettling to his spouse. The Applicant’s spouse states that FGM may befall her in Gambia; the Applicant would resist such a request from the tribal people; and his resistance would expose them to threats of violence from the community there. The record includes country conditions in Gambia related to human rights issues, including FGM and the widespread practice among teenage girls and less frequent practice among educated and urban groups. The record also includes health information for travelers to Gambia.

The record reflects that the Applicant’s spouse may experience difficulty in Gambia due to separation from family, loss of educational opportunities, and general country conditions. However, there is no evidence that she is currently receiving psychological treatment, and that suitable

treatment is not available in Gambia. In addition, the record indicates that her psychological hardship is primarily based on separation. The record is not clear as to financial hardship, if any, that she would experience in Gambia. The record does not include sufficient evidence to establish that she would be pressured to undergo FGM, as she is not in the targeted age group and it is not clear that she would be in a community where she would be pressured to have FGM done. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the Applicant's spouse would experience extreme hardship upon relocation to Gambia.

Addressing the hardships that the Applicant's spouse would experience upon remaining in the United States without the Applicant, the Applicant states that his spouse is unemployed; she relies on him for food, shelter, and living necessities as she seeks employment and continuation of her education; and he earns \$3,093 per month. The Applicant's spouse states that the Applicant is her sole source of support; and he could not find gainful employment in Gambia to support her. The record includes phone, electric, and cable bills; a lease; bank account records; evidence of rent payments; and paystubs for the Applicant from 2015. The record includes evidence that the Applicant's spouse was employed in 2013, but she stated on August 24, 2014, that she is currently unemployed. We also note that her 2013 federal tax return reflects an income of only \$12,190.

The Applicant's spouse states that the Applicant cares for her emotionally and psychologically. The Applicant states that his spouse has become sad and expressed anxiety since his interview, and she has developed major depressive disorder. The psychologist states that the Applicant's spouse was referred for evaluation due to intense sadness, nervousness, insomnia, under-eating, and preoccupation with losing the Applicant; her signs and symptoms have become worse since they emerged in 2010; she has showed significant elevation in areas of obsessive compulsion, depression, and paranoid ideation; she may experience feelings of loneliness, hopelessness, worthlessness, fear, panic, and tension; and she was diagnosed with major depressive disorder, severe chronic without psychosis.

The record reflects that the Applicant's spouse would experience significant emotional and psychological hardship without the applicant. In addition, she would experience significant financial hardship, which would also affect her ability to continue her education. Considering the hardship factors presented, in combination with the normal results of permanent separation from a spouse, we find that the Applicant's spouse would experience extreme hardship without the Applicant.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the Applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to his spouse in this case.

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The documentation in the record does not 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 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.

Cite as *Matter of A-N-*, ID# 13935 (AAO Oct. 1, 2015)