



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

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

MATTER OF A-B-

DATE: OCT. 5, 2015

MOTION OF AAO 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 (INA, or the Act) § 212(i), 8 U.S.C. § 1182(i). The Acting District Director, New York, New York, denied the application. We dismissed the appeal. The matter is now before us on motion. The motion is granted and the application is approved.

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, accordingly. We also found that the Applicant did not establish extreme hardship to a qualifying relative and dismissed the appeal accordingly.

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

A motion to reopen must state new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The motion's supporting evidence includes, but is not limited to, the Applicant's brief which cites to relevant case law, the Applicant's statement, the Applicant's spouse's statement, medical records, and country-conditions information on Senegal. Based on the new evidence and legal arguments presented, the requirements of a motion to reopen and reconsider have been met.

The record includes, but is not limited to, the aforementioned documents, the Applicant's previous 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 arriving at a decision on motion.

(b)(6)

Matter of A-B-

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 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 and, with this visa, was admitted to the United States on May 12, 2003.¹ 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 or his U.S. citizen stepchild² 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 USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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

¹ The Director's decision denying the 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 are not affected by this discrepancy in the Applicant's admission date.

² The record reflects that the Applicant's spouse was pregnant at the time that the motion was filed and her expected delivery date was [REDACTED], 2015.

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. *See Salcido-Salcido*, 138 F.3d 1292, 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 spouse 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

(b)(6)

Matter of A-B-

States; and she has no family in Senegal. The Applicant's spouse's parents detail their close relationship with her, and her father states that she cares for him. The Applicant states that his spouse is involved with her church, including administrating and directing the choir, and it would be impossible to imagine her life without her church.

In addition, the Applicant's spouse states that she would have a difficult time finding a job in Senegal as she does not speak Wolof or French; her Social Security benefits in the United States would be dramatically reduced; and she would not be able to pay off her debts and student loans.

The Applicant states that his family lives in slums in Senegal called [REDACTED]; Senegal is dealing with civil strife; there are riots, demonstrations and violence; they would live in a three-bedroom house with twelve other people; [REDACTED] is a highly populated area; and there are issues with sanitation and water sources. The Applicant's brother submits a statement detailing the living conditions of the house they would live in if they relocated.

Furthermore, the Applicant asserts that their children would have to attend public schools in Senegal and they would experience hardship based on the difference in the educational systems. The Applicant states that his spouse's son has asthma, a heart murmur, and allergies; he is seen by a doctor for his asthma; his asthma can be triggered by hot and humid weather; and he takes medication. The record includes evidence that the Applicant's spouse's son has asthma and a heart murmur. The Applicant's spouse states that her son has recently started a relationship with his father and she does not want to pull him from that relationship.

The Applicant states that his spouse takes care of her father's health; makes sure he takes his medication; cares for him when he has seizures; and deals with his issues related to his hypertension. He states that her siblings are not around and her parents are not together. The Applicant's spouse's father's medical records reflect that he visited the emergency room on November 27, 2014, with convulsions, and he has been prescribed numerous medications including medication for seizures.

The Applicant states that his spouse is pregnant and would not have easy access to a doctor in Senegal; she wants to have more children but there are serious risks to her and future children due to conditions in Senegal; his sister lost her baby due to less than ideal conditions in Senegalese hospitals; and his spouse has health insurance in the United States that she would lose if she moved. The record includes information on health issues for pregnant women in Senegal. The Applicant cites to country-conditions information that states the health care system is below U.S. standards; medical facilities outside of [REDACTED] are limited; and many health care workers do not speak English. The record includes an article on [REDACTED] detailing issues in that location, and general country-conditions information for Senegal. Finally, the record includes data related to the economic conditions in Senegal.

The record reflects that the Applicant's spouse has always resided in the United States. She has family ties to the United States; she is close to her parents; she cares for her father who has medical issues; and she is involved with her religious institution. The Applicant's spouse does not have any ties to Senegal. It is likely that she will have difficulty finding employment as she does not know the languages spoken in Senegal. In addition, she would experience hardship due to hardship her son

would experience from his medical issues and lost educational opportunities. We also recognize the lack of an adequate health care system in Senegal is a source of hardship in general, and specifically as it relates to pregnancy issues. The living conditions of where she would reside are also a source of hardship. Based on the totality of the hardship factors presented, we find that the Applicant's spouse would experience extreme hardship upon relocating 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 she would suffer extreme emotional and financial hardship. The Applicant 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 Applicant states that his spouse plans to stay at home to raise their unborn daughter; she would have to raise the two children alone; the store requires a great deal of travel; she would not be able to travel with the two children; she would have to work as a medical assistant and make less than the \$90,000 he makes; she would have to support him in Senegal; she would not be able to pursue her education due to finances; and she would not be able to pay her loans. The record includes a list of the family's monthly expenses, and 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, which indicates that the Applicant's spouse earns approximately \$225 per week and the Applicant earns \$600 per week from his business.

In regards to emotional 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.

The Applicant's statement supports the findings of the psychologist. The Applicant states that his spouse had a traumatic childhood; her mother abandoned her; she had a self-destructive lifestyle; he has been a calming influence in her life; she has cleaned up and stayed away from drugs; his departure could destabilize her; and he provides emotional support for personal achievements, birthdays, holidays, and anniversaries.

The record reflects that, given the Applicant's spouse's history of instability and substance abuse, the Applicant plays a significant role in his spouse's ability to maintain her wellbeing. Moreover, she would be raising her children alone and would have difficulty pursuing further education. The record also reflects that she would experience financial hardship without the Applicant. Considering the hardship factors mentioned, and the normal results of separation, we find that the Applicant has established that his spouse would experience extreme hardship if she remained in the United States.

Matter of A-B-

Considered in the aggregate, the Applicant has established that his spouse would face extreme hardship if his waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

We note that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Morales*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Morales at 300.

In *Matter of Mendez-Morales*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence

(b)(6)

Matter of A-B-

attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives).

Id. at 301 (citation omitted).

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The unfavorable factors in the Applicant's case include the Applicant's misrepresentation, his unauthorized employment in the United States; his period of unauthorized stay in the United States; and his eight criminal convictions for vending without a license, disorderly conduct, and trademark counterfeiting.³ The favorable factors include the Applicant's U.S. citizen spouse, extreme hardship to his spouse, his U.S. citizen stepson, and his expressions of remorse for his criminal convictions.

We find that the immigration and criminal violations committed by the Applicant are serious in nature; nevertheless, when taken together, the favorable factors in the present case outweigh the adverse factors, such that 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 motion is granted and the appeal is sustained.

Cite as *Matter of A-B-*, ID# 10507 (AAO Oct. 5, 2015)

³ The Applicant was convicted on [REDACTED], 2007, of trademark counterfeiting in the third degree under New York Penal Code § 165.71, a class A misdemeanor with a maximum penalty of one year. He was sentenced to one year of conditional discharge and one day of community service. Although this is a crime involving moral turpitude, he is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act, as the petty offense exception in section 212(a)(2)(A)(ii)(II) of the Act applies. The Applicant was not sentenced to a term of imprisonment in excess of six months and the maximum penalty possible for his crime does not exceed imprisonment for one year. Moreover, though he has been convicted for other crimes that do not involve moral turpitude, the Applicant is still eligible for the exceptions. *Matter of Garcia-Hernandez*, 23 I&N Dec. 590 (BIA 2003).