



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

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

MATTER OF B-D-

DATE: SEPT. 17, 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 (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Columbus, Ohio, denied the application. The Applicant appealed that decision and we dismissed the appeal. The Applicant filed a motion to reopen that decision, the motion was granted, but the underlying decision dismissing the appeal was affirmed. The matter is now before us on a second motion. The motion will be denied.

The Applicant 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), because he procured admission to the United States using a passport and visa issued in the name of another individual. The Applicant seeks a waiver under section 212(i) of the Act in order to reside in the United States with his U.S. citizen spouse.

The Director concluded that the Applicant did not establish that his inadmissibility would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. The Applicant appealed that decision, and his appeal was dismissed. The Applicant filed a motion to reopen and reconsider that decision and the motion was granted, but the underlying decision dismissing the Applicant's appeal was affirmed. The Applicant then filed a second motion to reopen.

On second motion the Applicant presents new facts concerning his spouse's mental health and he submits a psychotherapist's evaluation of his spouse. The Applicant also submits new evidence concerning his moral character, including his affidavit explaining the circumstances that led him to make decisions that have affected his admissibility under the Act, letters of support from community members, and documentation of his educational and training achievements.

A motion to reopen must state the 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 that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Here, the Applicant submits new documentary evidence to support a motion to reopen.

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The record includes, but is not limited to: briefs; affidavits by the Applicant's spouse; letters of support; documents concerning identity and relationships; employment, financial, and healthcare-related documents; photographs; a psychotherapist's letter; and reports describing conditions in Senegal. The entire record was reviewed and considered in rendering a decision on this motion.

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

(C) Misrepresentation.-

(i) In general.- 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.

...

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in relevant part:

- (1) The Attorney General [the Secretary 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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the Applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The Applicant's U.S. citizen spouse is the only qualifying relative in this case. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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 BIA 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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.

In our previous decision we found that the Applicant demonstrated that his U.S. citizen spouse would suffer extreme hardship if she were to relocate to Senegal with the Applicant. We did not find, however, that the evidence demonstrated that the Applicant's spouse would suffer extreme hardship were she to remain in the United States apart from the Applicant.

The Applicant states on motion that his spouse would suffer emotional and financial hardship that cumulatively amount to extreme hardship if the couple were to be separated. Concerning the emotional hardship that the Applicant's spouse would suffer were she to be separated from the Applicant, the Applicant's spouse submits a mental health status evaluation conducted by a psychotherapist. The therapist describes the Applicant's spouse as experiencing stress during the interview, in addition to anxiety and worry. She states that the Applicant's spouse is suffering from "acute stress disorder." She provides no other information concerning the Applicant's spouse's symptoms and describes how this disorder affects her ability to function in one statement, indicating that the Applicant's spouse's concentration and attention were "mildly impaired" due to her concerns about his immigration status. As this is new evidence submitted on motion concerning emotional hardship to the Applicant's spouse, we will take this documentation into consideration along with the other evidence of record.

Concerning financial hardship his spouse would experience, the Applicant states again, in his affidavit submitted on motion, that his spouse cannot work because of her susceptibility to losing consciousness, and therefore she would suffer financial hardship in the Applicant's absence, as he provides for her and their two U.S. citizen children. The evidence of record establishes that the Applicant works and supports his family. No documentation in the record, however, supports concluding that the Applicant's spouse is unable to work due to a medical condition. The Applicant's spouse also reported to the psychotherapist, as relayed in her report, that she does not wish to leave her children in the care of strangers who may not be able to meet their needs as Muslims. The Applicant's spouse further reported that her family members who reside in the United States are unable to assist her financially or care for her children were she to find employment, as they have their own families to support. The Applicant submits no evidence to support these statements. The most recent evidence in the record concerning the Applicant's spouse's physical health is dated April 20, 2010, and concerns a headache and kidney infection she suffered at the time. Although the Applicant's assertions regarding his spouse's financial hardship are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)). There is no documentation in the record to show that the emotional stress that the Applicant's spouse would experience, considered cumulatively with the other evidence of record, would differ from the hardship normally faced by families facing separation due to immigration inadmissibility. *Matter of Pilch*, 21 I&N Dec. at 632-33.

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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result

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in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996).

Moreover, if extreme hardship to a qualifying relative is established, the Applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). We do not normally address issues of discretion where extreme hardship has not been first established. In our previous decision; however, we noted that the record did not support a favorable exercise of discretion. Although the Applicant has provided evidence on motion that would support a favorable exercise of discretion in his case, we will not reach a conclusion regarding discretion where extreme hardship has not been established to a qualifying family member, as no purpose would be served.

In this case, the record does not establish that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship as required under section 212(i) of the Act.

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. Accordingly, the motion will be denied.

**ORDER:** The motion is denied.

Cite as *Matter of B-D-*, ID# 13159 (AAO Sept. 17, 2015)