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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: DEC 07 2011 Office: PHILADELPHIA, PA

FILE:

IN RE:

APPLICATION: Application for Waiver of Ground of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Senegal who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking admission within ten years of her last departure. The applicant is married to a United States citizen and is the beneficiary of an approved Form I-130, Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Field Office Director*, dated May 11, 2009.

On appeal, counsel asserts that the Field Office Director's denial of the applicant's waiver application was arbitrary and capricious, and was not based on any rigorous analysis of the facts and documents submitted in the record. *Form I-290B, Notice of Appeal*, dated June 10, 2009.

The record includes, but is not limited to, counsel's brief; statements from the applicant, her spouse and her mother; copies of medical records relating to the applicant's daughter; copies of Earnings Statements for the applicant and her spouse; tax returns and W-2 Wage and Tax Statements for the applicant and her spouse; a copy of a residential lease agreement; copies of bank statements; copies of bills; and country conditions information on Senegal. The entire record was reviewed and all relevant evidence considered in reaching a decision on appeal.

Section 212(a)(9) of the Act provides in pertinent part:

(B) Aliens Unlawfully Present -

(i) In general

Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The record reflects that the applicant entered the United States on June 9, 2001, using a nonimmigrant B-2 visa and did not depart when her authorized stay expired. In July 2005, the

applicant departed the United States pursuant to Advance Parole, triggering the bar to inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. As the applicant accrued unlawful presence of more than one year and is seeking admission within ten years of her 2005 departure, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act and must seek a 212(a)(9)(B)(v) waiver of inadmissibility.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i)(II) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. 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 United States 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).

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. *See Salcido-Salcido*, 138 F.3d at 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.

The AAO now turns to the question of whether the applicant in the present case has established that her U.S. citizen spouse would experience extreme hardship as a result of her inadmissibility.

On appeal, counsel asserts that removal of the applicant from the United States will result in financial and emotional hardship for her spouse. Counsel states that the applicant and her spouse enjoy two salaries that help them live a comfortable life, that the applicant makes more money than her spouse, and that her spouse depends on the applicant’s income to meet the family’s financial obligations. Counsel contends that, without the applicant’s income, her spouse would suffer severe financial hardship in that he will be the only one left to take care of the bills that they both incurred together. Counsel also states that the applicant’s spouse would incur additional expenses in airfare traveling to Senegal to visit the applicant and in supporting her in Senegal as she might not be able to find employment there. Counsel claims that the applicant’s spouse suffers from a depressed mood, which might turn into a clinically diagnosed-depression upon separation from his spouse. He states that the applicant’s spouse depends on the applicant for companionship and assistance in taking care of the

home and his stepchild, who has medical problems. Counsel contends that without the applicant, he would have to care for a sick child, with limited resources, which will add to his mental distress.

In a March 20, 2009 statement, the applicant's spouse asserts that he would suffer extreme hardship should the applicant be removed to Senegal. He states that he, the applicant and his stepdaughter are a close-knit family and that separation from the applicant would be devastating for him, disrupt the entire family, cause him to lose interest in everything and result in his emotional breakdown. The applicant's spouse also states that due to the economic downturn, he is only able to secure part-time employment at which he earns too little to take care of household expenses. The applicant's spouse contends that without the applicant's income, he would not be able to afford the costs of living for himself and his stepdaughter. The applicant's spouse also states that his stepchild suffers from febrile seizures, that the applicant is the only one who is trained to monitor her condition, that the applicant is the only one who can drive his stepdaughter to the emergency room should the need arise, as he does not have a driver's license. He indicates that caring for his stepdaughter would require him to cut his work hours, thereby further reducing his income.

The AAO notes the claims by counsel and the applicant's spouse regarding the impact of separation from the applicant, but does not find the record to support them. The record does not contain documentation e.g., medical records or reports, to establish the applicant's spouse's current mental health, the nature and severity of the emotional hardship that he would experience as a result of his separation from the applicant or how such emotional hardship would affect his ability to meet his daily responsibilities including taking care of his stepdaughter. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *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)).

As to the financial hardship of separation, the record contains information on the applicant's and her spouse's income as well as their monthly financial obligations. The record shows that the applicant's spouse's annual income for 2009 was about \$18,000, an amount above the poverty line for a family of two in 2009. Although the loss of the applicant's income will result in some level of financial hardship for her spouse, the record does not establish that, given the applicant's spouse's income and documented expenses, including day care, that he would suffer extreme financial hardship upon separation from the applicant. In addition, the AAO notes that the record appears to indicate that the applicant's daughter's biological father is a United States citizen, that he resides in the United States, and that he submitted a Form I-864, Affidavit of Support, on the applicant's behalf. If that is the case, it would seem logical that he would be involved in supporting his biological daughter, thus reducing or even eliminating the financial burden on the applicant's spouse.

The AAO acknowledges the claims made by the applicant's spouse regarding his concerns about his ability to meet his stepdaughter's healthcare needs in the applicant's absence. The record contains medical documentation from the Wyoming Valley Health Care System, which indicates that the applicant's daughter has a history of febrile seizures, the last episode being in October 2007. The record also indicates that she was also seen at the Wyoming Valley Health Center for a fever on

January 13, 2008. The material on febrile seizures from the National Institute of Neurological Disorder and Strokes, which was submitted by the applicant, reports that febrile seizures are convulsions brought on by fevers in infants and small children and that the vast majority are harmless. In this case, the record offers no evidence that the febrile seizures previously experienced by the applicant's daughter are other than the harmless type indicated in the submitted articles or that they continue to be a problem at the time of the appeal.

Accordingly, upon a review of the record, the AAO finds that the claimed hardship factors, even when considered in the aggregate, fail to establish that the applicant's spouse would experience extreme hardship if the waiver application is denied and he continues to reside in the United States without the applicant.

On appeal, counsel asserts that the applicant's spouse will experience hardship if he relocates to Senegal with the applicant. Counsel states that the applicant's spouse is a United States citizen; has never lived in Senegal; has no family ties to Senegal, except for the applicant; and that he would have difficulty adjusting to Senegalese culture and language. He indicates that the applicant's spouse is not a Muslim and would be at risk of harm from the applicant's Muslim family in Senegal. Counsel states that the applicant's spouse will have difficulty finding a job in Senegal because he does not speak French and because the country suffers from high unemployment, and general poverty.

In his March 20, 2009 statement, the applicant's spouse states that it would be a hardship for him to relocate to Senegal to live with the applicant. He states that as a United States citizen he would be exposed to cultural, and religious obstacles as well as a language barrier as he does not speak French, the official language of Senegal. He also asserts that if he became ill, he would not be able to obtain adequate medical care there. Additionally, the applicant's spouse states that due to the language barrier and the poor economic conditions in Senegal, he would not be able to get a well-paid job. The applicant's spouse further indicates that the applicant is from a Muslim family and community who strongly believe in Islam, and that he would have to embrace Islam to be fully accepted or face rejection or even harm. The applicant's spouse claims that his stepdaughter's medical condition would get worse in Senegal because she would not receive quality medical care and if care is available, he and the applicant would not be able to afford it.

In a June 5, 2009 letter, the applicant's mother states that the applicant's father is not happy about the applicant's marriage to her spouse because the family had agreed to her marriage only if her spouse converted to Islam. She reports that the applicant and her spouse rejected this condition and that the applicant's father has refused to speak to the applicant since her marriage, that he considers her "dead." The applicant's mother asserts that if the applicant and her spouse were to return to Senegal, that her father's family would harass and persecute them until her spouse converts to Islam or they leave the country.

The AAO acknowledges the preceding claims regarding the impact of relocation on the applicant's spouse. We specifically note the submitted country conditions information on Senegal which reports that it may be difficult for individuals in inter-religious marriages to obtain social acceptance in

Senegal. We also find that the applicant's spouse's inability to speak, read or write French would significantly affect his ability to obtain employment or adapt to Senegalese culture and society. When these factors, the applicant's spouse's lack of family ties to Senegal and the hardships routinely created by relocation are considered in the aggregate, the AAO finds that the applicant has established that her spouse would suffer extreme hardship if he relocated to Senegal with her.

Although the applicant has demonstrated that her spouse would experience extreme hardship if he relocated to Senegal to reside with her, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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 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). As the applicant has not demonstrated extreme hardship based on separation, we cannot find that refusal of admission would result in extreme hardship to her spouse in this case.

As the record does not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility, she has failed to establish eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.