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U.S. Department of Homeland Security
U. S. 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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FILE: [REDACTED] Office: ACCRA, GHANA Date: FEB 22 2011

IN RE: Applicant: [REDACTED]

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

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

Perry Rhew
Chief, Administrative Appeals Office

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

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 again seeking admission within ten years of his last departure from the United States. The applicant is the spouse of a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his wife.

In a decision dated July 17, 2008, the Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated July 17, 2008.

On appeal, the attorney for the applicant submitted a brief detailing the hardships that the qualifying spouse is facing as a result of her separation from the applicant. The attorney asserts that the qualifying spouse is encountering emotional, medical and financial hardships due to the absence of the applicant. Moreover, the applicant's attorney contends that the qualifying spouse would be unable to finish her education and pursue her career in Senegal. In addition, the attorney states that she would have a difficult time adjusting and face dangerous country conditions if she were to relocate to Senegal.

The record contains an approved Petition for Alien Relative (Form I-130), an Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), an appeal brief, affidavits from the qualifying spouse, an affidavit from the applicant's mother-in-law, a letter from the applicant's father, a letter from a friend, a reference letter from the applicant's guidance counselor, a health form for the qualifying spouse's annual physical, a document regarding the applicant's medical condition of malaria, a letter from the qualifying spouse's employer, the qualifying spouse's school transcript, photographs of the applicant and the qualifying spouse, emails and a letter from the qualifying spouse and country condition documentation for Senegal.

Section 212(a)(9)(B) 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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) 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. The applicant's wife 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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 *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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The

question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The applicant’s qualifying relative in this case is his wife, who is a United States citizen.

The record indicates that the applicant entered the United States without inspection in February of 1998, and remained until October of 2006 when he voluntarily departed. The applicant accrued unlawful presence from December 5, 2000, when he turned eighteen, until October 2006, a period in excess of one year. In applying for an immigrant visa, the applicant is seeking admission within ten years of his departure from the United States. The applicant has not disputed his inadmissibility. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

A waiver of the bar to admission under section 212(a)(9)(B)(v) of the Act is dependent first upon a showing that the bar imposes extreme hardship on a qualifying relative of the applicant. The AAO

notes that extreme hardship to the applicant's wife must be established in the event that she relocates to Senegal and in the event that she remains in the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The documentation submitted relating to the potential hardships facing the applicant's spouse includes an appeal brief, affidavits from the qualifying spouse, an affidavit from the applicant's mother-in-law, a letter from the applicant's father, a letter from a friend, a health form for the qualifying spouse's annual physical, a document regarding the applicant's medical condition of malaria, a letter from the qualifying spouse's employer, the qualifying spouse's school transcript, emails and a letter from the qualifying spouse and country condition documentation for Senegal.

As previously stated, the applicant's attorney asserts that the qualifying spouse is encountering emotional, medical and financial hardships due to the absence of the applicant. Moreover, the applicant's attorney contends that the qualifying spouse would be unable to finish her education and pursue her career in Senegal. In addition, the attorney states that she would face dangerous country conditions and would have a difficult time adjusting if she were to relocate to Senegal.

The applicant must first establish that his United States citizen spouse would suffer extreme hardship were she to remain in the United States while the applicant resides in Senegal due to his inadmissibility. With respect to this criterion, the applicant's attorney contends that the qualifying spouse is encountering emotional, medical and financial hardships as a result of her separation from the applicant. The record contains little documentary evidence regarding the qualifying spouse's emotional and medical issues associated with the applicant's inadmissibility, other than statements made by the qualifying spouse, her attorney, her mother and a friend. These statements demonstrate that the applicant's spouse is depressed and having a hard time with being separated from her husband. Moreover, a health form for the qualifying spouse's annual physical diagnosed her with "borderline high blood pressure" and "chronic stress/anxiety." With regard to her physical and emotional hardships, the record fails to reflect any treatment plan for her depression and "chronic stress/anxiety" or provide further detail concerning her condition to explain the gravity of the situation. The documentation also failed to demonstrate that the applicant's emotional issues are unusual and not ordinary consequences of removal. Moreover, although the applicant's attorney asserts that the applicant is also suffering from "high blood pressure," the health form provides little information regarding this condition and its severity.

With regard to the qualifying spouse's financial hardship, the applicant's spouse provided a letter from her employer that indicated she earns an annual salary of \$35,000. In addition, the record contains affidavits from the qualifying spouse and her mother, as well as a letter from her friend, which indicate that she is having a difficult time financially. However, the applicant failed to provide any documentary proof of his qualifying spouse's expenses and other financial documentation, such as tax returns, to demonstrate her financial situation. Although the distress caused by separation from one's spouse is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be

expected upon removal. As such, the applicant has not met his burden in showing that the qualifying spouse would suffer extreme hardship if she remained in the United States without the applicant.

However, the applicant has demonstrated that his qualifying spouse would suffer extreme hardship in the event that she relocated to Senegal. The qualifying spouse has lived in the United States for her entire life and does not speak French. The applicant's spouse also indicates that she would be unable to finish her college education and pursue her career in Senegal, and she has safety concerns regarding relocating to Senegal. The record contains her school transcript to confirm her enrollment in school. The record also includes country condition information to support the assertions made regarding the qualifying spouse's safety concerns about living in Senegal and her concerns regarding pursuing her career there. The AAO concludes the qualifying spouse would experience extreme hardship if she relocated to Senegal to accompany the applicant.

In sum, although the record indicates that the applicant's wife may be encountering hardships based on separation, it does not support a finding that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship if she remained in the United States without the applicant. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's spouse is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. The AAO therefore finds that the applicant has failed to establish extreme hardship to his spouse, as required for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.