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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**

**PUBLIC COPY**

[REDACTED]

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Date: JUL 29 2011

Office: LOUISVILLE

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds 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:

[REDACTED]

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.

Thank you,

*Maria Feh*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Louisville, Kentucky. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved. The matter will be returned to the field office director for continued processing.

The record reflects that the applicant, a native and citizen of The Gambia, entered the United States with a valid B nonimmigrant visa in July 2000, with permission to remain until January 2001. He remained beyond the period of authorized stay. In March 2005, the applicant filed the Form I-687, Application for Status as a Temporary Resident. The applicant was issued the Form I-512, Authorization for Parole of an Alien into the United States (Form I-512) in June 2005 and subsequently used the advance parole authorization to depart and re-enter the United States. The applicant withdrew the Form I-687 in March 2006. In January 2008, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), based on a concurrently filed Form I-130, Petition for Alien Relative, submitted on the applicant's behalf by his U.S. citizen spouse, Thea Annette Morgan. The Form I-485 was denied on February 11, 2009.

The proper filing of an application for legalization or affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as an authorized period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act*, dated May 6, 2009. As such, the applicant accrued unlawful presence from January 2001 until March 2005, the date of his proper filing of the above-referenced Form I-687 and again, from the withdrawal of the Form I-687 in March 2006 until his proper filing of the above-referenced Form I-485 in January 2008. Thus, the applicant is 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. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and step-child, born in 1992.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 11, 2009.

On appeal, counsel submits a brief, dated March 13, 2009, and referenced exhibits, including but not limited to, medical documentation pertinent to the applicant's spouse and numerous AAO decisions. In addition, on May 10, 2011, the AAO received supplemental evidence from counsel, including: an affidavit from the applicant's spouse; an updated evaluation from a social worker; a copy of the applicant's spouse's father's death certificate; and tax and social security benefit documentation. The entire record was reviewed and considered in rendering this decision.

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

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.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 to the satisfaction of the Attorney General (Secretary) 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 the applicant or his wife's 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. 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-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 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 applicant's U.S. citizen spouse contends that she will suffer emotional, psychological and financial hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility. In a declaration she states that her husband is her backbone, her partner, her rock, and her very best friend and without his daily emotional support, she will not be able to make it. She explains that she has suffered for many years with depression and has twice tried to commit suicide and without her husband's daily presence, she fears that her depression will worsen and she will try to commit suicide again. In addition, the applicant's spouse explains that she was laid off

during the recession and has been unable to obtain gainful employment and her social disability payments have ended due to her husband's employment and thus, she is completely dependent on her husband financially. *Affidavit of Thea Morgan Sisay*, dated April 20, 2011. Finally, the applicant's spouse explains that her youngest child, a sophomore in high school, is very attached to the applicant and will experience hardship were he to relocate abroad, thereby causing her hardship. *Affidavit of Thea Annette Morgan*, dated October 22, 2008.

In support, a letter has been provided from Dr. [REDACTED] confirming that the applicant's spouse is being treated for depression, has attempted suicide multiple times and requires medication to control her depression. *Letter and Medical Notes from [REDACTED] University of Louisville Physicians*, dated March 10, 2009. Evidence of anti-depressant and anti-anxiety medications prescribed to the applicant's spouse has also been provided. In addition, documentation has been submitted establishing that the applicant's spouse was receiving Supplemental Security Income payments from the Social Security Administration based on her developmental disability, specifically, functioning at the dull normal range of intelligence. *Letter from [REDACTED]*, dated October 1, 2008 and *Social Security Administration Supplemental Security Income*, dated November 25, 2007. Moreover, Ms. [REDACTED] indicates that the applicant's step-child was recently hospitalized for depression at The Brook, an inpatient psychiatric center, was placed on Prozac and is being monitored closely by a psychiatrist. *Letter from Patricia [REDACTED]* dated May 8, 2011. Finally, the record establishes that the applicant is working over 80 hours per week at two jobs to make ends meet. *Letter from [REDACTED] Store Manager, [REDACTED]*, dated August 12, 2008, *Letter from [REDACTED] Store Manager, [REDACTED]* dated February 13, 2008, and *U.S. Individual Income Tax Return for 2010*.

The record reflects that the cumulative effect of the emotional, psychological and financial hardship the applicant's spouse would experience due to the applicant's inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, the applicant's spouse would suffer extreme hardship.

In regards to relocating abroad to reside with the applicant due to his inadmissibility, the applicant's spouse contends that were she to relocate to The Gambia, she would experience emotional, psychological and financial hardship. To begin, the applicant's spouse explains that her father recently died unexpectedly and she plays an integral role in her elderly mother's care. She notes that she spends 4 to 5 hours a day with her mother, who is suffering from incontinence, caring for her daily needs and providing emotional support and she would not be able to live with herself if she was unable to care for her mother. *Supra* at 2. In addition, the applicant's spouse notes that her four children reside in the United States, and long-term separation from them, most notably her youngest child who was recently diagnosed with depression and requires ongoing treatment, would cause her hardship. Moreover, the applicant's spouse explains that she needs constant monitoring and treatment for her mental health situation by physicians familiar with her conditions and a relocation abroad, without health care coverage, would cause her hardship.<sup>1</sup> Finally, the applicant's spouse

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<sup>1</sup> The U.S. Department of State notes the following regarding medical care in The Gambia:

explains that she is unfamiliar with the culture and customs and will suffer due to the substandard economy. *Supra* at 1.

A citizen of the United States by birth, the applicant's spouse has no ties to The Gambia beyond those of the applicant. She would relocate to a country with which she is not familiar. She would have to leave her family, including her elderly mother and her four children, and her community. In addition, a relocation abroad would mean the loss of affordable medical care, through her husband's employer, by physicians familiar with her mental health conditions. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

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Medical facilities in The Gambia are very limited, some treatments are unavailable, and emergency services can be unpredictable and unreliable. Travelers should carry their own supplies of prescription, as well as over-the-counter medicines or treatments.

In many places, doctors and hospitals still expect payment in cash (local currency) at the time of service. Your regular U.S. health insurance may not cover doctors' and hospital visits in other countries.

*See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, “[B]alance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. “ *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardship the applicant’s U.S. citizen spouse and step-child would face if the applicant were to reside in The Gambia, regardless of whether they accompanied the applicant or remained in the United States, his community ties, his long-term gainful employment, the payment of taxes, and the apparent lack of a criminal record. The unfavorable factors in this matter are the applicant’s periods of unlawful presence and unauthorized employment in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary’s discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

**ORDER:** The appeal is sustained. The waiver application is approved. The field office director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.