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



U.S. Citizenship
and Immigration
Services



H6

DATE: **NOV 10 2011**

OFFICE: PHILADELPHIA

FILE: 

IN RE: Applicant 

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)



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,

for

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, a native and citizen of Mali, entered the United States without authorization in 2000 and remained in the United States until December 8, 2005. He reentered the country with an advance parole document in January 2006. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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 does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to reside in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated April 1, 2009.

On appeal, the applicant states, through his attorney, that his wife will suffer severe emotional, physical, and financial hardship if the applicant is removed from the United States. The record contains a brief by the applicant's attorney submitted on May 21, 2009, an affidavit of the applicant's wife dated January 9, 2009, medical records showing that the applicant's wife has degenerative arthritis of the left knee and recommending a knee replacement, and financial records. The entire record was reviewed and considered in rendering a decision on the appeal.

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 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-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 record reflects that the applicant is a thirty-nine year-old male native and citizen of Mali who entered the United States in 2000 without inspection. The applicant accrued unlawful presence in the United States from his entry in 2000 to August 15, 2005, when he filed an application for Status as a Temporary Resident under Section 245A of the act (Form I-687). He departed the United States on December 8, 2005 and returned on January 26, 2006 with an advance parole document and is inadmissible under Section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of one year or more. The Form I-687 application was denied February 27, 2006. The applicant married [REDACTED] on December 18, 2007 and submitted an application for adjustment of status on June 25, 2008.

The applicant’s wife states that she will suffer extreme emotional hardship without the applicant because she has suffered from depression and alcoholism as a result of her previous marriage to an abusive man, and the applicant is needed for her to continue her rehabilitation. *See affidavit of [REDACTED]* dated January 9, 2009. Although the record indicates that the applicant’s spouse has a history of alcohol abuse for which she has sought treatment, the most recent documentation on this condition is from 2005. There is no evidence that the applicant’s spouse is in recovery or whether she is still seeking treatment, and furthermore, there is no evidence to indicate that the applicant has played a role in her recovery, or that her recovery would be jeopardized in his absence.

The applicant’s spouse also states that she needs to care for her ailing mother. *See affidavit of [REDACTED]* dated January 9, 2009. However, there is no evidence included in the record concerning the applicant’s spouse’s mother’s condition. In addition, other than the father of the applicant’s wife, the record contains no information regarding other family members that could be

available to assist in the care of the applicant's spouse's mother or any explanation as to why only the applicant could provide such support. 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)).

The applicant's spouse further contends that she is facing financial difficulties, including a debt of \$50,000, and that she is in arrears for child support payments, for which she is making payments. See affidavit of [REDACTED] dated January 9, 2009. The applicant's wife submitted financial records including bank statements, residential lease statements, and copies of income tax returns. However, there is no evidence to support the claim that the applicant's spouse has \$50,000 in credit card debt. Further, there is no evidence in the record to support the assertion that the applicant's spouse depends on the applicant for financial support. Although the record includes a copy of the applicant's 2007 income tax return, there are no copies of IRS Forms W-2, thus it is not clear how much the applicant earned in 2007 and contributed to the financial support of their family.

The applicant's wife stated that she suffers physical hardship due to a medical condition which has been diagnosed as degenerative arthritis of the left knee, and presented medical documentation regarding her condition. The applicant's spouse asserts that she is unable to work because of this condition, and relies on the applicant's income. See affidavit of [REDACTED], dated January 9, 2009. Although the record indicates that the applicant's spouse has this medical condition, there is no evidence in the record to establish that the applicant's spouse cannot work. The record indicates that the applicant's spouse applied for social security disability benefits in 2008. See *Letter from the [REDACTED] Department of Labor and Industry*, dated November 20, 2008. However, there is nothing in the record to indicate the results of this application.

The applicant's wife states that her nursing license was suspended, and submitted evidence that on May 15, 2002, the [REDACTED] State Board of Nursing suspended her license to practice practical nursing for at least three years. It has now been more than eight years since the applicant's spouse's nursing license has been suspended. The record contains no information regarding the applicant's wife's efforts to have her nursing license restored, other than a statement in the applicant's spouse's affidavit that she is unable to provide the Board of Nursing with medical documentation that she has been cured of her alcoholism problem as she is unable to afford to participate in an outpatient program. See affidavit of [REDACTED] dated January 9, 2009. Further, as noted above, the record indicates she sought treatment in 2005, but contains no updated evidence of any subsequent efforts to recover from her addiction or have her license reinstated. As noted above, 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)). The evidence on the record is insufficient to establish that the applicant's wife is unable to have her license reinstated at this time and return to employment as a nurse.

Although the AAO is sympathetic to the fact that Ms. Fofana could experience some financial detriment due to a separation from the applicant, the evidence submitted indicate that the hardship being experienced does not rise to the level of extreme. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The record does indicate that the qualifying relative would experience extreme hardship if she relocates to Mali to be with the applicant. The applicant's attorney states that, due to the medical condition of applicant's spouse, she will require a knee replacement at some time in the future, and that Mali does not have the facilities to carry out such a procedure. The applicant's attorney asserts that failing surgery, the applicant's spouse will be confined to a wheelchair, and Mali has little or no special facilities for the handicapped. *See Memorandum of [REDACTED]*, Esq, dated May 21, 2009. In support of this contention, the applicant submitted a copy of the January 2005 Country Profile on Mali, which states: "Mali is ranked among the world's poorest nations and, as such, faces numerous health challenges related to poverty, malnutrition, and inadequate hygiene and sanitation. Its health and development indicators rank among the worst in the world." Federal Research Division, Library of Congress, Country Profile: Mali, 7 (January 2005).

In addition, the applicant's spouse has resided in the United States for her entire life. The applicant's spouse's parents and three children reside in the United States. The applicant's spouse's ties to the United States and the fact that she would not be able to obtain proper medical treatment for her knee condition in Mali, considered in the aggregate, establishes that the applicant's qualifying relative would suffer extreme hardship if she relocated to Mali.

In this case, the record does not contain sufficient evidence to show 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 if she remains in the United States without the applicant. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required 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)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.