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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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[Redacted]

Date:

OCT 11 2011

Office: NEW YORK, NEW YORK

FILE:

[Redacted]

IN RE:

[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:

[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.

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,

f/

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, New York, New York. 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 Gambia 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.

The District Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in extreme hardship to the qualifying relative. The District Director denied the application accordingly. *See Decision of the District Director* dated June 3, 2009.

On appeal, the applicant's attorney contends that the qualifying spouse would suffer emotional and financial hardships if the qualifying spouse were to remain in the United States without the applicant. Further, the applicant's attorney stated that the qualifying spouse would also suffer from the inability to have children with the applicant if he returned to Gambia. The applicant's attorney also asserts that the qualifying spouse would have a difficult time assimilating into the culture of Gambia.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), an appeal brief, a letter from the qualifying relative, an affidavit from the applicant, an approved Petition for Alien Relative (Form I-130), some financial documentation and other documentation submitted with the Application to Adjust Status (Form I-485). 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:

(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-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 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 March 2000. The applicant thereafter submitted an Application for Status as a Temporary Resident under Section 245A of the Act (Form I-687) on February 25, 2005, which was denied on April 21, 2006. The applicant then voluntarily departed the United States in 2007 and reentered the United States with Advance Parole on October 1, 2007. On July 27, 2008, the applicant submitted an application for adjustment of status (Form I-485). The applicant accrued unlawful presence from March 2000 until February 25, 2005, when he submitted Form I-687, and again from April 21, 2006 to July 27, 2008, when he applied for adjustment of status. In applying for an immigrant visa, the applicant is seeking admission within ten years of his 2007 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.

The documentation provided that specifically relates to the qualifying spouse’s hardship includes Form I-601, Form I-290B, an appeal brief, a letter from the qualifying relative, an affidavit from the applicant, some financial documentation and other documentation submitted with Form I-485. The entire record was reviewed and considered in rendering a decision on the appeal.

As aforementioned, the applicant’s attorney contends that the qualifying spouse would suffer emotional and financial hardships if the qualifying spouse were to remain in the United States without the applicant. Further, the applicant’s attorney stated that the qualifying spouse would also suffer from the inability to have children with the applicant if he returned to Gambia. The applicant’s attorney also asserts that the qualifying spouse would have a difficult time assimilating into the culture of Gambia.

The AAO finds that the applicant has failed to establish that his qualifying spouse will suffer extreme hardship as a consequence of being separated from him. The applicant's attorney asserts that the qualifying spouse will encounter emotional hardship as a result of the applicant's inadmissibility. The record contains a letter from the qualifying spouse and an affidavit from the applicant, which deals with the qualifying spouse's potential for emotional hardship. In her letter, the qualifying spouse states that she and her children will "endure emotional distress" if the applicant is removed. She also indicates that "her past life has been a very disruptive and unstable one; and meeting [the applicant] has created the stability and added meaning to [her] life" and that removing him would cause "unimaginable damage" to her life. The applicant also states that the qualifying spouse relies on him for stability and emotional support. However, the record failed to provide sufficient detail to demonstrate the types of the emotional hardships that the qualifying spouse would face if she remained in the United States without the applicant. Assertions are evidence and will be considered. However, going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. 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)).

With respect to the financial hardships, the applicant's attorney asserts that the applicant's departure "will thrust his spouse into poverty." However, there is very little documentation in the record to substantiate these assertions. The record contains some tax information and a few expenses that were provided with the application for adjustment of status. However, there were no earnings statements or employer letters to determine the financial contributions by the applicant and/or the qualifying spouse. The limited expense information fails to provide a clear picture of the qualifying spouse's financial situation. Further, the qualifying spouse indicates in her letter that she and the applicant send money to her children that are taken care of by her "adoptive mother", but there is no documentary evidence to support such statements. Further, one of the tax forms provided, Form 1040EZ, is a document for single and joint filers with no dependants. Therefore, it does not appear that the qualifying spouse or applicant has any dependants. As such, the applicant failed to establish that the qualifying spouse would have a difficult time supporting herself, or that she will suffer financially as a result of the waiver being denied. Lastly, the applicant's attorney claims that the qualifying spouse would suffer from a "loss of conjugal rights" and that their separation would result in their inability to have children with the applicant. In her letter, the qualifying spouse also states that it is an "important goal of mine [having a child with the applicant] will not be fulfilled" if the applicant is removed. However, there is no indication how the qualifying spouse's difficulty in having children with the applicant would be outside the ordinary consequences of removal.

The applicant also failed to establish that the qualifying spouse would experience hardship upon relocation to Gambia. The applicant's attorney indicates that the qualifying spouse would suffer financially upon relocation stating that it is unlikely she will be able to find work. He also asserts that the qualifying spouse will have a difficult time assimilating into Gambian culture, which he contends entails restrictions on women and also a new language. Moreover, the qualifying spouse states that she is concerned about healthcare and education for herself and her children. However, the record contains no evidence regarding the country conditions in Gambia supporting such

assertions. As previously stated, going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici, supra*, at 165. While we agree that the qualifying spouse may encounter difficulties with learning a new language in Gambia, there was no evidence provided to demonstrate that her issues in learning a language would pose a hardship to her. Further, the qualifying spouse does indicate whether the applicant has family in Gambia which would make her assimilation into life there easier. As such, the applicant has not met his burden of demonstrating that his qualifying spouse will suffer extreme hardship in the event that she relocates to Gambia.

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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his qualifying spouse as required under section 212(a)(9)(B) 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.