

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

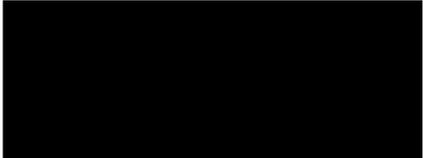
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

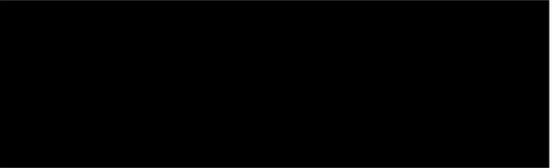
PUBLIC COPY

H6



Date: Office: CHARLOTTE, NORTH CAROLINA FILE: 
SEP 16 2011
IN RE: Applicant: 

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:


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, Charlotte, North Carolina, 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 readmission within ten years of his last departure from the United States. The applicant is married to a United States citizen and the father of three United States citizen stepchildren and three Senegalese children. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 with his spouse and stepchildren.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 24, 2008.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Services (USCIS) erred in denying the applicant's waiver application. *See Form I-290B*, filed October 24, 2008. Counsel claims that the applicant "provided adequate evidence of hardship to USC wife to meet the statutory requirements for a positive adjudication." *Id.*

The record includes, but is not limited to, counsel's appeal brief; counsel's brief in support of the applicant's Form I-601; statements from the applicant and his wife; letters of support for the applicant and his wife; medical documents for the applicant and his wife; birth certificates for the applicant's children and stepchildren; tax documents, bank statements, mortgage documents, insurance documents, medical bills, and household and utility bills; employment verifications for the applicant and his wife; country conditions documents on Senegal; and documents for the applicant's removal proceeding. The entire record was reviewed and considered in arriving at 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.

....

- (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 [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.

In the present case, the record indicates that the applicant entered the United States on September 3, 2001 as a B-1 nonimmigrant visitor with authorization to remain in the United States until December 2, 2001. On May 9, 2003, the applicant filed an Application to Register for Permanent Resident or Adjust Status (Form I-485) based on a Form I-130 relative petition filed by his wife on his behalf. The applicant was granted advance parole, and on May 29, 2004, the applicant departed the United States. On July 26, 2004, the applicant was paroled back into the United States. On October 27, 2004, the applicant departed the United States, and was paroled back into the United States on December 24, 2004. On or about July 15, 2005, the applicant's Form I-485 was denied. On February 1, 2007, the applicant filed another Form I-485.

The applicant accrued unlawful presence from December 3, 2001, the day after his authorization to remain in the United States expired, until May 9, 2003, the date he filed a Form I-485. Additionally, the applicant accrued unlawful presence from July 16, 2005, the day after his Form I-485 was denied, until February 1, 2007, the date he filed his second Form I-485. The applicant is seeking admission into the United States within ten years of his May 29, 2004 departure. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year, and seeking admission within 10 years of his departure.

In counsel's appeal brief dated October 21, 2008, counsel states that the applicant's advance parole was requested by his prior attorney, who he has "since filed a grievance with the North Carolina State Bar." Counsel claims that the parole document states that presentation of the document authorizes a CBP inspector to parole the applicant back into the United States, and a person reading this statement "would assume that this 'authorization' is within legal boundaries and therefore has no reason to assume that it would threaten their pending adjustment of status application." The AAO notes that the Authorization for Parole of an Alien into the United States (Form I-512L) also clearly states that "[i]f after April 1, 1997, you were unlawfully present in the United States for more than 180 days before applying for adjustment of status, you may be found inadmissible under section 212(c)(9)(B)(i) of the Act when you return to the United States to resume the processing of your application." By using the parole document, the applicant was put on notice that if he departed the United States after 180 days of unlawful presence in the United States, he may be found inadmissible. The AAO notes that it is the applicant's responsibility to ensure he understood the consequences of his application.

While the AAO notes the concerns expressed by counsel, they do not alter the facts in the present case, which are that the applicant departed the United States on advance parole after accruing more than one

year of unlawful presence, thereby triggering the bar to admission in section 212(a)(9)(B)(i)(II) of the Act. To qualify for a waiver, he, like any other waiver applicant, must satisfy the extreme hardship requirement set forth in section 212(a)(9)(B)(v).

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 stepchildren can be considered only insofar as it results in hardship to a qualifying relative. 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.

In counsel's brief dated August 14, 2008, counsel states the applicant's wife "could not uproot to be with [the applicant]. Moving with [the applicant] would dislocate her from the rest of her entire family and would cause emotional trauma and cultural shock." Counsel states the applicant's wife "would not be able to enjoy all of the freedoms as a woman" in Senegal. She states the applicant's wife "cannot leave a safe and comfortable environment to reside in a country where her standard of living would decrease substantially." Counsel claims that the applicant's wife "would be without a job and in serious danger in Senegal." Counsel also claims that the applicant's wife "would not be able to move to Senegal with [the applicant] since she would not be able to find a job do [sic] to her limited scope line of work." Counsel states the applicant's wife would not be able to find employment in Senegal because "there are not many positions that require a degree in Psychology and most of the work force is agriculturally based." The AAO notes the applicant's wife's concerns regarding the difficulties she would face in relocating to Senegal.

Counsel states the applicant's wife has hypertension and a multinodular goiter, the applicant has diabetes, and they are both being treated for their medical conditions with medications. In a letter dated July 30, 2008, [REDACTED] states the applicant's wife has hypertension which is controlled with medication, and she has a multinodular goiter which does not require any medication. Counsel states the applicant's wife would suffer medical hardship in Senegal as she "would no longer have access to health insurance or care." In a letter dated July 28, 2008, Dr. Champ states the applicant has diabetes which is being treated with medication. Counsel states the applicant "would not receive the necessary health care for his diabetes," and it would worsen. Counsel also claims that "the widespread disease and violence in Senegal would jeopardize [the applicant's] life." The AAO notes that counsel submitted a country profile on Senegal which states "[t]here is inadequate inpatient psychiatric care and limited office-based psychiatric treatment. Public hospitals do not meet U.S. standards. Medical facilities outside Dakar are limited." However, the country profile also states "[s]everal hospitals and clinics in the capital, Dakar, can treat major and minor injuries and illnesses." The AAO notes that although the submitted

documentation indicates that healthcare in Senegal is below United States standards, it does not establish that the applicant's wife cannot be treated for her medical conditions in Senegal or that she has to remain in the United States to receive treatment(s). However, the AAO notes the medical concerns of the applicant and his wife.

The AAO acknowledges that the applicant's wife is a citizen of the United States and that she may experience some hardship in joining the applicant in Senegal. The AAO notes the submitted country conditions documents; however, these documents do not establish that the applicant's wife would be unable to obtain employment upon relocation that would allow her to use the skills she has acquired in the United States. Additionally, the AAO notes that the record establishes that the applicant's wife suffers from hypertension and she has a multinodular goiter; however, as noted above, the submitted documentary evidence does not establish that she cannot receive treatment for her medical conditions in Senegal, that she has to remain in the United States to receive treatment, or that her medical conditions would affect her ability to relocate. Therefore, based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Senegal.

Regarding the hardship the applicant's wife would suffer if she were to remain in the United States, counsel claims that the applicant's wife and family "will be emotionally devastated if [the applicant] were to leave." Counsel states the applicant provides "caregiver support for his stepson's family while his stepson served the United States in Iraq." She states the applicant "has become very attached to [his wife's] family and is considered a grandfather by her grandchildren." In a statement dated August 12, 2008, the applicant states he has bonded with his wife's children, and he "cannot imagine being separated from those that [he] love[s]." The AAO acknowledges that the applicant's stepchildren may suffer some hardship in being separated from the applicant; however, the AAO notes that the applicant's stepchildren are not qualifying relatives, and the applicant has not shown that hardship to his stepchildren will elevate his wife's challenges to an extreme level. In a statement dated August 12, 2008, the applicant's wife states the applicant helped her when her mother was sick, and if the applicant returned to Senegal she "would no longer have this kind of support and would find it very difficult to endure tragic events." Counsel states the applicant's wife "would suffer emotionally due to distraction preventing her from completing duties at work. She would suffer financially if she lost her job and new business." The applicant's wife states she would worry about the applicant in Senegal without access to medical services for his diabetes. Counsel states that the applicant's wife's medical conditions "are satisfactorily controlled at present;" however, her "hypertension will likely worsen if she is left alone due to separation from [the applicant]." The applicant's wife states she also has problems concentrating, she is forgetful, and she cannot sleep. The AAO notes the applicant's wife's concerns.

Counsel claims that the applicant and his wife "have accrued over \$110,000 in debts," and the applicant's wife "will not be able to pay this large debt off without the help of [the applicant]." Counsel states the applicant's wife will have to declare bankruptcy if the applicant cannot help her. The record includes documentation such as a mortgage statement, credit card and medical bills showing that the applicant and his spouse have incurred significant financial obligations. However, the AAO notes that the record does not establish that the applicant contributes financially to the household. The applicant states he stays home and takes care of the house. Additionally, counsel states the applicant's wife is

employed as a social worker and she “is currently the primary financial provider of the couple.” The AAO notes that counsel states the applicant’s wife “has a small business that depends on [the applicant’s] expertise;” however, there is no documentary evidence submitted establishing that the applicant’s wife has a business or that the applicant’s wife cannot run her business without the applicant’s assistance. The applicant’s wife states the applicant “probably would not even be able to find a job” in Senegal. Counsel states the employment opportunities for the applicant “pay substantially less than in the United States.”

The AAO acknowledges that the applicant’s wife may suffer some emotional problems in being separated from the applicant. However, the AAO notes that while it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished his wife’s emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. 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)). The AAO notes that the record establishes that the applicant’s wife has hypertension and a multinodular goiter, and counsel indicates that the applicant’s wife’s hypertension will worsen if she is separated from the applicant. However, the AAO notes that counsel’s claim is speculative and there is no documentary evidence in the record to support counsel’s assertion. Further, no evidence was submitted establishing that the applicant’s wife would be unable to get necessary care in the United States even if her hypertension were to worsen. Therefore, the record does not establish that the applicant’s spouse would suffer any significant medical hardship as a result of separation from the applicant. Additionally, the AAO notes that the applicant’s wife may experience some financial hardship in being separated from the applicant; however, the applicant has not provided sufficient documentation establishing that his wife would be unable to support herself in his absence. The AAO also notes that the applicant has not established that he would be unable to obtain employment in Senegal and, thereby, financially assist his wife from outside the United States. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant’s wife caused by the applicant’s inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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.