

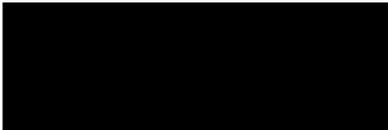
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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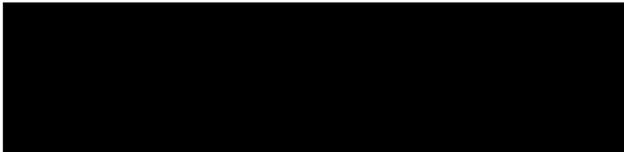
DATE: APR 13 2012 OFFICE: LOUISVILLE, KENTUCKY

File:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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, Louisville, Kentucky and 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 seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child.

The Field Office Director concluded that the applicant 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. See *Decision of the Field Office Director*, dated December 3, 2009.

On appeal, counsel asserts extreme hardship of a familial, health-related and economic nature to the applicant's spouse. See *Form I-290B*, Notice of Appeal or Motion, received December 30, 2009.

The record contains, but is not limited to: Form I-290B and counsel's brief; Forms I-601, I-485 and denials of each; two hardship letters; two letters from a social worker; two letters from the applicant's spouse's mother; character reference letters; medical records for the applicant's spouse's brother and son; birth and marriage records; and Form I-130. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides:

(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 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 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. No court shall have

jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record reflects that the applicant entered the United States in or about July 2002 with a B-2 visitor visa. The applicant voluntarily departed the U.S. on or about March 15, 2006 and re-entered the U.S. on April 26, 2006 with a valid advance parole document. The applicant accrued unlawful presence from about January 2003 forward, a period in excess of one year. As the applicant was unlawfully present in the United States for more than one year and seeks readmission within 10 years of his March 2006 departure he was found inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 USC § 1182(a)(9)(B)(i)(II). The record supports this finding, the applicant does not dispute this finding, and the AAO concurs that the applicant is inadmissible under section 212(a)(9)(B) of the Act.

A waiver of inadmissibility under section 212(9)(B)(v) of the Act is dependent on a showing that the bar to admission would impose 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 applicant's children can be considered only insofar as it results in hardship to the qualifying relative. The applicant's 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’s spouse is a 33-year-old native and citizen of the United States who states that she and the applicant met in June 2008, were engaged in November 2008 and married in May 2009. The applicant has a 9-year-old son from a prior relationship who resides in Senegal and the applicant’s spouse has a 4-year-old son from a prior relationship who resides with her and the applicant. The applicant’s spouse states that her world would crumble without her husband and that his immigration process has caused her migraine headaches and an upset stomach from worrying. In a letter [REDACTED] asserts that it would be nearly impossible for the applicant and his spouse to sustain their relationship during a lengthy separation as their contact would be restricted to phone calls, and traveling to Senegal for visits will be prohibitive due to distance and cost. [REDACTED] asserts that the applicant is the sole wage earner for the family, the applicant’s spouse collects unemployment, and she would have to “quit school and return to fulltime work at an unskilled job where she would probably earn the minimum wage.” The applicant’s spouse states in a letter dated January 24, 2011 that she has enrolled in college and is working toward a degree in Healthcare Administration and has acquired “many student loans from the federal government.” [REDACTED] asserts that if the applicant is removed, his spouse would suffer extreme emotional hardship exacerbated by her decreased standard of living without her husband’s income.

The AAO notes that no documentary evidence has been submitted concerning any medical or psychological conditions suffered by the applicant's spouse; the cost of telephone calls and/or travel between the United States and whether either would be financially prohibitive; that the applicant's spouse would earn minimum wage were she to return to work; or that she would be unable to support herself and her son in the applicant's absence. 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 evidence is insufficient to establish significant or uncommon emotional, health-related, or economic hardship to the applicant's spouse. While the AAO recognizes that the applicant's spouse would experience some reduction in income and may need to return to work if her husband is removed, such difficulties are commonly associated with the inadmissibility of a loved one and the evidence is insufficient to establish that she would be unable to support herself and her son in the applicant's absence.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant's spouse states that she has never traveled outside the United States, never lived anywhere but Louisville, Kentucky, speaks only English, has no knowledge of [REDACTED]. She states that her family is very close and she has three adult brothers, including [REDACTED] who has had hydrocephalus since birth and lives with their widowed mother as he cannot manage independently. The applicant's spouse states that as the youngest child and only daughter, she has to help her mother with [REDACTED] daily activities. She states that she goes to her mother's home every day and helps with laundry, ironing, cooking and cleaning, and also takes [REDACTED] to church on Sunday. The applicant's spouse states that her elderly mother is unable to care for him alone and the thought of leaving her mother and disabled brother is unimaginable. Her mother confirms that the applicant's spouse comes over daily to help with managing [REDACTED] daily routine, it is very hard for her to physically care for him as she grows older, and her daughter helps in transfer to all medical appointments, takes him outside and assists with his daily hygiene routines. The applicant's spouse's mother states that she cannot imagine being able to keep her son at home without her daughter's assistance. Supporting medical records for [REDACTED] have been submitted.

Assertions have been made concerning hardship to the applicant's stepson. As discussed above, hardship to the applicant's children can be considered only insofar as it results in hardship to the applicant's qualifying relative – here the applicant's spouse. The applicant's spouse states [REDACTED] torn away from his biological father, brother, sister, aunts, uncles and grandparents in the United States. [REDACTED] asserts that [REDACTED] biological father, who provides weekly financial support for his son, would not likely allow him to relocate to [REDACTED]. While the record contains no supporting documentary evidence, the AAO acknowledges that if [REDACTED] is permitted to relocate he would be separated from his biological father, and if not permitted he would be separated from his mother, likely resulting in significant

emotional hardship to the applicant's spouse. [REDACTED] asserts that adapting to Senegal's harsh, hot, dry and dusty climate will be very difficult for both the applicant's spouse and her son. She asserts that [REDACTED] to remove eyelid cysts on both eyes and suffers allergies for which he has already had tubes inserted in his ears. [REDACTED] asserts that the applicant's spouse has allergies and takes medicine as needed. Documentary evidence corroborates [REDACTED] conditions.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including her lifelong residence in the United States and difficulty adjusting to a country, culture, and language with which she is unfamiliar and so different from her own; her close family ties - particularly to her mother and disabled brother; community and church ties in the U.S.; that her 4-year-old son would either be separated in Senegal from his biological father or in the U.S. from his mother if not allowed to relocate abroad, likely causing significant emotional hardship to the applicant's spouse; and asserted economic, health-related, and education concerns.

When considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if she were to relocate to Senegal to be with the applicant.

Although the applicant has demonstrated that his qualifying relative spouse would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.