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



U.S. Citizenship
and Immigration
Services

[REDACTED]

H6

DATE: FEB 01 2012 Office: INDIANAPOLIS, IN

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.

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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Indianapolis, Indiana and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of Republic of Guinea 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 admission within 10 years of his last departure. The applicant is the spouse of a U.S. citizen. He seeks a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to remain in the United States.

The Field Office Director (FOD) concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision*, dated August 5, 2009.

On appeal, counsel asserts that the FOD erred in concluding that the applicant has not established extreme hardship to his qualifying relative. Counsel contends that the FOD did not properly consider all of the relevant hardship factors. Counsel also contends that it is unjust for United States Citizenship and Immigration Services (USCIS) to invoke section 212(a)(9)(B) of the Act to deny the applicant's adjustment application (Form I-485) since the applicant departed the United States relying on guarantees provided by the Immigration Reform and Control Act of 1986 (IRCA).¹ *Form I-290B, Notice of Appeal or Motion*, dated September 7, 2009.

The record includes, but is not limited to, the following evidence: counsel's briefs; a statement from the applicant's spouse; a copy of Form I-512L, Authorization for Parole of an Alien into the United States; copies of the birth certificates of the applicant's stepchildren; medical records for the applicant's spouse; information on country conditions in the Republic of Guinea; financial and employment documents for the applicant and his spouse; and copies of household bills and a residential lease. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(9)(B) states in pertinent part:

(B) Aliens Unlawfully Present.-

¹ The AAO notes that counsel also contends that the applicant is not inadmissible under section 212(a)(3)(A)(ii) of the Act. Although the FOD indicates in the January 15, 2009 Notice of Intent to Deny that the applicant is inadmissible under this section of the Act, his August 5, 2009 decision is based solely on section 212(a)(9)(B). Therefore, the AAO will not address counsel's contentions regarding section 212(a)(3)(A)(ii) inadmissibility.

(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.

The record reflects that the applicant entered the United States on June 10, 2000 with a B-1/B-2 nonimmigrant visa, which authorized him to remain in the United States until December 10, 2000. The record contains no evidence that the applicant filed an application to extend or change his nonimmigrant status prior to the expiration of his authorized stay and he does not make such a claim. Therefore, beginning on December 11, 2000, the applicant began accruing unlawful presence in the United States. On June 30, 2005, the applicant was issued a parole document as a part of an application for temporary residence he filed on April 14, 2005, under the IRCA.² Sometime after June 30, 2005,³ the applicant departed the United States, thereby triggering the unlawful presence provisions of 212(a)(9)(B)(i)(II) of the Act. He was paroled back into the United States on November 7, 2005. Based on the applicant's history, the AAO finds that the applicant accrued unlawful presence in excess of one year from December 11, 2000, until his departure in September 2005. As the applicant is seeking admission within ten years of his 2005 departure, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act.

On appeal, counsel contends that it is unjust for USCIS to invoke section 212(a)(9)(B) of the Act to deny the applicant's adjustment application (Form I-485) when the applicant departed the United States pursuant to the guarantees provided by IRCA. Counsel further contends that the parole document did not provide an explicit warning regarding section 212(a)(9)(B) inadmissibility.

While we note counsel's concerns, the language of the section 212(a)(9)(B) of the Act provides for no exceptions to the inadmissibility that results when an alien departs the United States after accruing more than 180 days of unlawful presence. An individual who departs the United States based on advance parole granted by USCIS while his or her TPS application is pending triggers the unlawful presence grounds of inadmissibility under section 212(a)(9)(B) of the Act.

² The applicant's Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, was denied on April 24, 2006. While a pending TPS application may toll unlawful presence, it did not do so in the present case since the applicant's TPS application was denied. See Memo from Donald Neufeld, Act. Assoc. Dir., Dom. Ops., Lori Scialabba, Assoc. Dir., Refugee, Asylum and Int. Ops., Pearl Chang, Off. Of Pol. and Stra., U.S. Citizenship and Immigration Serv., to Field Leadership, *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* (May 6, 2009).

³ Counsel's brief indicates that the applicant departed the United States in September 2005.

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. Hardship to the applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. 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).

In the present case, the record reflects that the applicant is married to a U.S. citizen. The applicant also claims two stepchildren who are U.S. citizens. The applicant's spouse meets the definition of a qualifying relative. The applicant's stepchildren are not qualifying relatives for purposes of the waiver sought and, therefore, any hardship they might experience as a result of the applicant's inadmissibility will be considered only to the extent it results in hardship to the applicant's spouse.

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 BIA 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, 631-32 (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, “[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., In re 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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel contends that the applicant’s spouse has been diagnosed with pyelonephritis and that her medical condition is severe, making it impossible to relocate with her husband. Counsel further asserts that the applicant’s spouse is fearful about taking her eight-year-old daughter to Guinea to face the possibility of female genital mutilation (FGM).

The applicant has submitted a February 16, 2009 statement from his spouse, [REDACTED]. In her statement, [REDACTED] indicates that she has been diagnosed with pyelonephritis and that she makes frequent hospital visits to check on her kidneys. [REDACTED] also states that Guinea is “a total disaster politically and socially . . . [and she] can’t go there.”

As evidence of his wife’s medical condition, the applicant has submitted a copy of hospital records dated May 13, 2006 and May 16, 2006. According to the discharge notes, [REDACTED] was admitted

for active pyelonephritis; treated with intravenous fluids, an antibiotic, a pain medication, and a nausea medication; on discharge, she had no fever, blood cultures were negative, white blood cells and electrolytes were within normal limits, and she was voiding adequately. [REDACTED] was told to see her Primary Care Doctor within one month.

The applicant has also submitted information on health care and conditions in Guinea, provided by The Guinea Development Foundation and the Encyclopedia of the Nations. The reports indicate that in 1993, health conditions in the Republic of Guinea were among the poorest in the world, and that despite the numerous attempts made by the Guinean Ministry of Health and Population to improve the overall administration of the country's health care system since 1986, limited resources and increasing demands consistently disrupt the distribution of health care services.

Having reviewed the preceding evidence, the AAO finds that it fails to establish that the applicant's spouse would experience extreme hardship if she relocated to the Republic of Guinea. In reaching this conclusion, we have first considered [REDACTED] medical condition. The record establishes that [REDACTED] was hospitalized in May 2006 for three days for "acute pyelonephritis" and was told by the treating physician to follow up with her primary care doctor within one month. The hospital report does not identify her condition as chronic and no other medical documentation has been submitted to substantiate that she continues to have renal problems or that she requires frequent hospital or doctor visits to monitor her kidney function. The record also fails to indicate that she has any other medical condition that requires medical care.

The submitted information on health conditions in the Republic of Guinea and its health care system also fails to support a determination of extreme hardship. The articles report statistics from the 1990s and infant birth and mortality rates for 2002. The AAO finds this information to be too dated to establish the status of Guinea's health care system at the time the appeal was filed. Furthermore, because the applicant has failed to establish that his wife has a chronic condition that requires continuing medical care, the AAO finds the information on Guinea's health care system of minimal value to the hardship analysis. Even if the record established that the applicant's spouse had ongoing health concerns, this material does not demonstrate that she could not obtain medical care in Guinea.

Counsel asserts that the applicant's spouse fears taking her eight-year-old daughter to Guinea because she could potentially be subjected to FGM. Absent supporting documentation, this assertion cannot be given great weight. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)). Similarly, without documentary evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-*

Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). The applicant's spouse, however, does express concerns about political and social conditions of Guinea. She states that according to the online research that she has conducted, Guinea is "a total disaster politically and socially" and she specifically refers to the 2008 coup. It is noted that U.S. Department of State, Travel Warnings indicate that the political situation in Guinea remains unpredictable. U.S. citizens are urged to exercise caution, and to avoid crowds and demonstrations while in Guinea. Country conditions evidence, however, does not, in and of itself, establish extreme hardship. Furthermore, the record contains no other evidence to demonstrate that the applicant's wife faces danger if she relocates to Guinea.

The AAO finds that the hardship factors articulated and when considered in the aggregate do not establish that the applicant's spouse would experience extreme hardship if she relocates to Guinea.

The record also fails to establish that the applicant's spouse would experience extreme hardship if the waiver application is denied and she remains in the United States. On appeal, counsel contends that the applicant is the primary source of income for the household and without his support, the applicant's spouse and her children will suffer a devastating financial impact.

In her February 16, 2009 statement, [REDACTED] states that she is a full-time student and that the applicant is providing financial support until she finishes school. She also indicates that she will be providing the financial support when the applicant goes back to school to get his degree. In addition, [REDACTED] indicates that she cannot live without the applicant and that she wants her children to have the mother and father she never had.

In support of these claims, the applicant has submitted copies of his and his wife's tax returns. According to the 2007 federal tax return document for [REDACTED], she filed the return as the head of household and earned \$9,225 in wages. The amended 2007 federal tax return for the applicant indicates that the applicant also filed as the head of household and had \$15,375 in gross income. A letter dated October 21, 2008 from [REDACTED] indicates the applicant earned \$500.00 net per week. In addition, the record contains an unsigned July 2007 letter from the human resources department of [REDACTED], indicating the applicant's hourly pay was \$13.05 including the shift differential; however, evidence in the record suggests that at the time the appeal was filed in 2009, the applicant was employed solely as a cab driver.

The record also reflects monthly expenses that total \$2289 listed by counsel in response to the Notice of Intent to Deny. *Counsel's letter* dated February 14, 2009. To establish monthly expenses, the applicant has submitted a copy of a residential lease; copies of three checks paid for rent; proof of insurance coverage and billing history; copies of Internet, phone and utility statements and bills; and charges to the applicant's credit card.

To establish his wife's student status and educational expenses, the applicant has submitted a copy of an unsigned letter, dated January 22, 2009, from the U.S. Department of Education regarding how to

apply for federal student aid using "FAFSA on the Web." He has also submitted copy of a Federal [REDACTED] signed on October 7, 2008 by [REDACTED] a receipt for a \$30 cash payment made to [REDACTED] a copy of an [REDACTED] on October 7, 2008; an unsigned Student Loan Advance/Stipend Request dated December 8, 2008 in the amount of \$1,118.00; and a copy of an unsigned October 2008 National College Award Worksheet showing total available financial assistance of \$12,231, which estimates the total cost of education at \$8,942.

We find that the evidence submitted fails to demonstrate that the applicant's wife will experience extreme hardship upon separation from the applicant. In considering the financial hardship issues that the applicant has raised, the AAO reviewed all relevant evidence. The AAO notes that the record lacks evidence regarding the applicant's spouse's income since 2007. Without such information, we are not able to accurately assess her financial situation. Counsel claims the applicant's spouse's income dropped in 2008 when she became a full-time student; however, nothing in the record supports this claim. In addition, counsel indicates that the applicant's spouse's two children are financially dependent on the applicant; however, nothing in the record supports that claim. The applicant's wife listed someone other than her children on her 2007 tax return as a financial dependent. Similarly, she does not indicate either of her children as members of her household on the Form I-864, Affidavit of Support Under Section 213A of the Act, that she filed in 2007.

Furthermore, the evidence submitted to verify the applicant's spouse's student loans and her status as a full-time student does not establish that she ever took advantage of the educational loans available to her and was a full-time student at the time the appeal was filed. There is no evidence indicating that the applicant's spouse attended college courses or incurred student loans after February 2009. In the absence of supporting evidence, the AAO will not speculate on the spouse's expenses.

In her statements, the applicant's spouse also expresses her love for the applicant and the emotional hardship that the separation would cause for her and her children. The AAO acknowledges that she would experience emotional hardship as a result of her separation from the applicant; however, the record lacks evidence to establish the nature and the severity of her hardship. In addition, the record does not establish whether her children live with her and the applicant or how any hardship the children may suffer would affect their mother, the qualifying relative in this case. The AAO concludes that the record lacks the necessary evidence to establish emotional hardship.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, when considered in the aggregate, rise beyond the common results of removal or inadmissibility. Accordingly, the applicant has not established eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether she 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 establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Because the applicant has not met that burden, the appeal will be dismissed.

ORDER: The appeal will be dismissed.