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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H6

DATE: **JAN 03 2012**

OFFICE: ATLANTA

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:

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, Atlanta, Georgia, 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 entered the United States with a B2 nonimmigrant visa on December 27, 1998 with authorization to remain until June 26, 1999. The applicant remained in the United States beyond that date and filed an application for temporary residence status on April 3, 2005. The applicant subsequently departed from the United States and returned pursuant to a grant of advance parole on February 2, 2006. The applicant accrued unlawful presence in the United States from June 27, 1999 until April 3, 2005. The applicant 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 a beneficiary of an approved Petition for Alien Relative, as a spouse of a U.S. citizen, who seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and stepchild¹.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated July 7, 2009.

On appeal, counsel for the applicant asserts that the applicant's spouse and stepchild raised health issues in the applicant's waiver application and that they would also suffer extreme financial hardship in the event of the applicant's departure from the United States. Counsel further asserts that the applicant's spouse and stepchild cannot relocate to Senegal because they do not speak the language and have no ties to the country.

In support of the waiver application and appeal, the applicant submitted an affidavit, letters from his employer, a letter from his spouse, identity documents, financial information including paystubs and taxes, a psychological evaluation, and background information concerning Senegal. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act, in pertinent part, provides:

(B) ALIENS UNLAWFULLY PRESENT.-

- (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

....

¹ It is noted that in addition to the applicant's stepdaughter, the applicant states that he is the father of two United States citizen children.

(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.

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.,* [REDACTED] 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 U.S. citizen spouse. The record contains references to hardship the applicant’s stepchild would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant’s children as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to applicant’s stepchild will not be separately considered, except as they may affect the applicant’s spouse.

In the present case, the record reflects that the applicant is a thirty-one year-old native and citizen of Senegal. The applicant’s spouse is a twenty-nine year-old native and citizen of the United States. The applicant is currently residing in the United States with his spouse and stepchild in Lithonia, Georgia.

The applicant asserts that he is the main source of income for his United States citizen wife, his stepdaughter, and his two United States citizen children, so that his removal would result in extreme hardship for his family. *See Affidavit from* [REDACTED] dated September 2, 2009. It is initially noted that the applicant’s stepchild and children are not qualifying relatives for the purposes of this application and any hardships they would experience will only be considered insofar as it affects the applicant’s spouse. It is also noted that the applicant’s spouse is not the mother of the applicant’s two United States citizen children. *See Birth Certificate of*

██████████ dated January 29, 2006; *Birth Certificate of Ramatoulaye Sene*, dated September 8, 2003. The applicant submitted a tax return indicating that his two children are dependents, but there is no information concerning with whom his children reside, their mother's financial status, or the amount of support provided by the applicant. *See Applicant's 2008 U.S. Individual Income Tax Return*. It is also noted that the applicant's stepchild is not listed as a dependent on his tax return. *Id.*

The applicant's spouse asserts that their family can only live a prosperous life with the help of her husband and that they need both of their incomes to live a middle-class life. *See Letter from ██████████* The applicant's spouse further asserts that if she cannot rely upon her husband's income, they would potentially lose their home. *Id.* According to the Form I-864 submitted by the applicant's spouse on behalf of the applicant, she is employed as a teacher. *See Form I-864, Affidavit of Support*, dated June 7, 2007. The record does not contain information concerning the extent of the applicant's spouse's household obligations, including mortgage or other household bills. The record is insufficient to find that the applicant's spouse will suffer extreme financial hardship if the applicant returns to Senegal. 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)). Further, the 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, it is not enough by itself to justify an extreme hardship determination. ██████████ 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The applicant's spouse states that the immigration process has created stress for her family and that the applicant is a foundation and support system for her daughter. *See Letter from ██████████*, dated May 11, 2009. As above, it is noted that the applicant's stepchild is not a qualifying relative for the purposes of this waiver application and any hardship she would experience will only be considered insofar as it affects the applicant's spouse. The applicant's spouse submitted an evaluation to support her assertions concerning her psychological state. *See Evaluation from ██████████* dated May 2, 2009. According to the evaluation, the applicant's spouse's response to a symptom checklist suggests that she meets the diagnostic criteria for clinical depression and generalized anxiety disorder. *Id.* The evaluation further states that the applicant's spouse experienced anxiety symptoms about a year ago and was prescribed anti-anxiety medication. *Id.* The record does not contain any evidence concerning the applicant's spouse's psychological state aside from the above-referenced evaluation of May 2, 2009. It is acknowledged that separation from a spouse nearly always creates a level of hardship for both parties, but there is no indication that if the applicant departs from the United States, the emotional hardship suffered by the applicant's spouse will impact her continued ability to perform in her work and daily life. There is insufficient evidence in the record to find that the applicant's spouse will suffer a level of emotional hardship beyond the common results of inadmissibility or removal if the applicant returns to Senegal.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

Counsel for the applicant contends that the applicant's spouse cannot relocate to Senegal because she and her daughter do not speak the languages spoken in Senegal, they have no ties to the country, and their family lives in the United States. Counsel further asserts that the applicant's spouse has never visited Senegal and would not have a source of income if the applicant were unable to find employment in Senegal. The applicant states that his parents do not live in Senegal because his father is deceased and his mother resides in the United States. *See Letter from [REDACTED] dated May 11, 2009.* The applicant's spouse states that she could not live in Dakar, Senegal because she is wholly unfamiliar with the country and the culture and traditions of Senegal would be harmful to herself and her daughter. *See Letter from [REDACTED] dated May 11, 2009.* The applicant's spouse specifically states that she would be concerned that her daughter would be subject to female genital mutilation. *Id.*

The record establishes that the applicant's spouse is currently employed as a teacher in the United States and that she and the applicant own their own home. The applicant's spouse states that she is unfamiliar with Senegal because she has never visited the country. Further, the applicant's spouse does not speak the languages spoken in Senegal and the applicant's spouse's entire family resides in the United States. It is acknowledged that if the applicant's spouse departed from the United States, she would leave behind her employment position, her property, and her family. The applicant's spouse also expresses a concern that her daughter would be subject to female genital mutilation if they relocated to Senegal. In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, if she were to relocate to Senegal, rise to the level of extreme hardship.

The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

Although the applicant has demonstrated that the qualifying relative 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 relative in this case.

The AAO therefore finds that the applicant has failed to establish extreme hardship to her 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.