

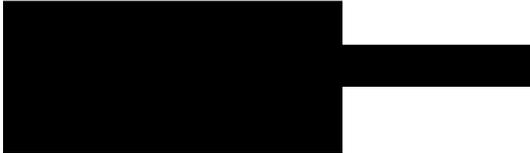
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



H6

DATE: MAR 02 2012 Office: ACCRA, GHANA

File: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Accra, Ghana. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Guinea. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure. He is married to a United States citizen. He 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 31, 2009.

On appeal, counsel for the applicant asserts that the evidence establishes that the applicant's spouse will experience extreme hardship due to the applicant's inadmissibility. *Attachment, Form I-290B*, received on September 1, 2009.

The record includes, but is not limited to, counsel's brief; a statement from the applicant's spouse; a statement from the applicant; tax returns for the applicant; tax returns for the applicant's spouse; statements from friends and acquaintances attesting to the applicant's moral character; country conditions materials on Guinea; a statement from Dr. [REDACTED] of Southside Internal Medicine, undated, pertaining to the applicant's spouse's medical conditions; copies of money transfer receipts from the applicant's spouse to the applicant; copies of travel itineraries and associated costs provided by the applicant; a copy of a residential property deed; educational certificates for the applicant's spouse; and documents filed in relation to the applicant's asylum application.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

(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 indicates that the applicant entered the United States with a B-2 visa on March 9, 1991, and remained until he voluntarily departed on May 3, 2008. The applicant filed an I-589, Application for Asylum and for Withholding of Removal, on August 26, 2004, which was withdrawn concurrent to his departure. Therefore, the applicant was unlawfully present in the United States for over a year from April 1, 1997, the effective date of the unlawful presence provision of the Act until August 26, 2004, a period over one year, and is now seeking admission within ten years of his last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

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 his children can be considered only insofar as it results in hardship to a 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-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.

Counsel asserts on appeal that the evidence establishes that the applicant's spouse will experience extreme hardship due to the applicant's inadmissibility. *Statement of Counsel*, received September 1, 2009. Counsel asserts that the applicant's spouse has several medical conditions for which she takes several medications that are not available in Senegal, where the applicant is currently residing. Counsel explains that the applicant's spouse is a U.S. born citizen, has lived in the United States all her life and has extensively family ties throughout the United States.

The AAO acknowledges that the applicant's spouse has extensive family ties in the United States, and that if she relocated she would experience a separation impact from her own children from a prior marriage, as well as her parents and siblings.

The record also contains country conditions materials on Guinea. The AAO takes note of counsel's assertion that the applicant is unable to reside in Guinea because of his political history in the country. Counsel explains that the applicant's father was killed in July 1985, and this is supported by evidence in the record. Background materials from prior proceedings indicate that the applicant's father attempted to seize power in Guinea in 1985, and was killed in the attempt. The applicant asserts that he and his mother were arrested, and that his mother spent two and a half years in jail. The AAO notes the applicant's concerns regarding living in Guinea, especially considering his family's history in Guinea. The record reflects that the applicant is currently residing in Senegal, where he has no status and is unable to work.

The record contains a note from the applicant's spouse's doctor which lists the medications she takes for her asthma condition includes Advair, Nasonex, Singulair, Lantus, Humalog, Diflucan and Provertile HFA, which would not be available in Africa. The AAO also notes that [REDACTED] states the applicant's spouse suffers from labile diabetes mellitus, allergic rhinitis and bronchial asthma, and that she has had multiple hospitalizations resulting from her condition.

Although the evidence of the applicant's spouse's medical conditions is not extensive, the statement from [REDACTED] is probative. The AAO can establish, based on the applicant's spouse's medical conditions, that she would experience an uncommon physical and medical impact upon relocation from interruption of her continuity of care.

The record reflects that the applicant's spouse has lived in the United States her entire life, has extensive family ties in the United States and has serious medical conditions. The AAO also notes the applicant's spouse's concerns regarding conditions in Guinea, and concerns regarding conditions and lack of legal status in Senegal. When these hardship impacts are considered in the aggregate, they are sufficient to establish that the applicant's spouse would experience uncommon hardships rising to the degree of extreme hardship upon relocation to either Guinea or Senegal.

Counsel asserts that the applicant's spouse will experience physical, emotional and financial hardship upon separation. *Statement of Counsel*, received September 1, 2009. Counsel explains that the applicant's spouse has traveled to Africa six times to see the applicant at great cost, and is having to maintain the applicant's residential property in Atlanta, Georgia.

There is sufficient evidence to demonstrate that the applicant's spouse has had to assume an additional financial burden, which is somewhat distinct from the common financial impact associated with separation. However, the record contains a tax return for the applicant's spouse indicating that she is gainfully employed and that she earned \$41,758 as a tax consultant in 2004. Based on her income, the record does not make clear that she would be unable to meet her financial obligations or that she would be unable to meet her obligations by re-arranging her finances. Without additional evidence which establishes that the applicant's spouse's income is insufficient to meet her financial obligations, the record does not establish that she will experience any uncommon financial impact upon departure.

As discussed above, the record does not contain extensive documentation of the applicant's spouse's medical conditions, however, the statement that has been submitted is sufficiently probative to corroborate her assertions. The statement from [REDACTED] states that he has treated the applicant's spouse since 2001, that she suffers from diabetes mellitus, allergic rhinitis and bronchial asthma and that she has been hospitalized on several occasions due to her conditions. He further notes that she is on a number of medications. Based on this evidence the AAO finds that the applicant's spouse will experience an uncommon physical hardship due to separation, which will be given due consideration when aggregating the impacts upon separation.

The record contains a psychological assessment for the applicant's spouse. In that evaluation [REDACTED] ED.D LMFT-LPC , concludes that the applicant's spouse is experiencing symptoms of Depression and an Anxiety Disorder, and recommends that she seek additional counseling due to her condition. Based on this evidence the AAO can establish that the applicant's spouse is more than likely experiencing some emotional hardship, and will give this factor due consideration when aggregating the impacts on her.

Based on the record the AAO finds that the applicant's spouse will experience uncommon emotional and physical impacts due to separation. An aggregate examination of these hardship factors with the common factors which impact qualifying relatives upon separation indicates that they rise above those impacts commonly experienced by the relatives of inadmissible aliens to a degree constituting extreme hardship. As the record indicates that a qualifying relative will experience extreme hardship both upon relocation and separation, the AAO will now consider whether the applicant warrants a waiver as a matter of discretion.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the

alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300 (Citations omitted).

The AAO finds that the unfavorable factors in this case include the applicant's unlawful presence and unauthorized employment. The favorable factors in this case include the presence of the applicant's spouse, the hardship she would experience if the applicant were not admitted to the United States, the applicant's long-term residence and the lack of any criminal record during his residence in the United States. Although the applicant's unlawful presence and unauthorized employment are serious matters, the favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised. The director's decision will be withdrawn and the appeal will be sustained.

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 rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained. The application is approved.