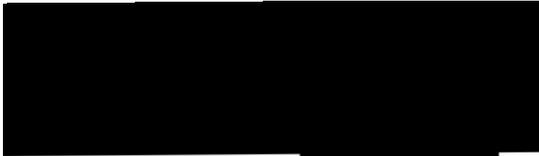




U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

H2



FILE:

Office: LOS ANGELES, CA

Date: JUN 21 2006

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, CA, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Cameroon who was found to be inadmissible to the United States (U.S.) under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation in December 1996. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant did not establish through evidence that his spouse would suffer extreme hardship as a result of his inadmissibility. The application was denied accordingly. *Decision of the District Director*, dated November 22, 2004.

On appeal, counsel asserts that the district director abused his discretion in denying the applicant's case because extreme hardship was established. He also submits new evidence on appeal. *Counsel's Brief*, dated December 20, 2004.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record indicates that in December 1996 the applicant entered the United States on a French passport belonging to a friend. A section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship the alien himself experiences due to separation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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. 22 I&N Dec. at 565-566.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Cameroon or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant's spouse states that she will suffer emotionally if her husband is removed from the United States. The applicant submitted a psychiatric evaluation completed by Dr. [REDACTED] on August 10, 2005. In the evaluation the doctor states that the applicant's spouse has a history of emotional and physical abuse. Her birth mother was an alcoholic and was unable to care for her. Only three days after the spouse's birth, her mother gave her up for adoption and she was raised by her foster mother who was emotionally and physically abusive. At five years old, she also suffered an incident of sexual molestation by one of her foster mother's male friends. The applicant's spouse had two previous marriages. Her second marriage involved severe physical and emotional abuse. She suffers from severe depression, anxiety and panic attacks. She also has suicidal ideations.

The applicant and his spouse were married in 1998. His spouse states that before she met the applicant she was subjecting her children to emotional abuse and some physical abuse. She felt like she could not control her anger. The applicant's spouse states that four years ago she attempted suicide by overdosing on pills when she thought the applicant was having an affair and feared that he was going to leave her. Since the applicant has been a part of her life she has been much better with her children because he has taken over all the disciplinary duties. Her panic attacks and depression have also lessened. The applicant is the primary reason she decided to seek psychiatric help for her condition. After she tried to commit suicide he convinced her to seek help and was very supportive and understanding. Dr. [REDACTED] concludes his evaluation of the applicant's spouse by stating that she meets all the symptom criteria for Major Depressive Episode, severe and Panic Disorder, severe. He recommends a treatment plan of psychotherapy and medications. The applicant submitted three doctor's notes which state the spouse's symptoms and then prescribe her the anti-depressant medications Paxil, Atvian and Zoloft. These notes are dated June 3, 2004; February 17, 2005; and March 9,

2005. *See Exhibit E of Counsel's Brief.* Because of the applicant's spouse's history of abuse as well as her current mental health problems and the dependency she has on the applicant to maintain her well-being, the AAO finds that she would suffer extreme hardship as a result of being separated from the applicant.

The second part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Cameroon. The applicant's spouse states that she will suffer emotionally as a result of relocating to Cameroon. She states that she fears for the safety, education and health of her children if she relocated to Cameroon. The AAO notes that given the spouse's childhood background and mental state relocating to Cameroon would have a devastating effect. She will be removed from everything she now knows including her doctors. Because of the applicant's mental health condition and suicidal ideations, relocating to Cameroon would cause extreme hardship. Therefore, the record does reflect that relocation will result in extreme hardship to the applicant's spouse.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship to the applicant's spouse, the absence of any criminal record, and the passage of almost 10 years since the applicant's immigration violation. The unfavorable factor in this matter is the applicant's willful misrepresentation to officials of the U.S. Government in obtaining admission to the United States. The AAO finds that the hardship imposed on the applicant's spouse as a result of the applicant's inadmissibility outweighs the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), 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. Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the waiver application is approved.