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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: BALTIMORE, MARYLAND

Date: APR 08 2008

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h); and 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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Interim District Director for Services (IDD), Baltimore, Maryland, and the Administrative Appeals Office (AAO) rejected a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The AAO will reopen the matter and issue a new decision. The waiver application will be denied.

The applicant, a citizen of Liberia, was found inadmissible to the United States 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant is the spouse of a United States citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his wife.

The IDD concluded that the applicant had failed to establish that extreme hardship would be imposed on his children and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

The record establishes that the applicant pleaded guilty of conspiring to defraud the United States, in violation of 18 U.S.C. § 371, on March 19, 1992. According to the plea agreement, the applicant pleaded guilty to

knowingly, willfully, and unlawfully making, forging, counterfeiting and altering passports and instruments purporting to be passports, with the intent that the same be used, and with knowingly, willfully and unlawfully obtaining and receiving documents prescribed by statute as evidence of authorized stay and employment in the United States, specifically work authorization cards, knowing them to be forged and counterfeited, altered and falsely made and to have been procured by means of a false claim or statement. . .

The IDD found the applicant inadmissible to the United States under section 212(a)(6)(C) of the Act which states, in pertinent part, the following:

- (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:

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 IDD denied the waiver application, finding that the applicant had failed to demonstrate that his United States citizen wife would suffer extreme hardship if the applicant were to return to Liberia. The applicant appealed the IDD's decision, and the matter is now before the AAO.

The AAO disagrees with the IDD's analysis. The applicant in this case is not inadmissible to the United States under section 212(a)(6)(C) of the Act. While the applicant's criminal activities were a form of misrepresentation, they were not the type of misrepresentation covered by section 212(a)(6)(C) of the Act, as the

applicant was not applying for a visa, other documentation, admission into the United States, or any other benefit under the Act. He was found guilty of producing fraudulent documents which could be used to obtain benefits under the Act, but there is no evidence that he used any of the documents himself. Thus, his criminal activity does not fall under section 212(a)(6)(C) of the Act, and he is not inadmissible to the United States under that section of the Act.

The AAO finds the applicant inadmissible to the United States under section 212(a)(2) of the Act, as the crime for which the applicant pleaded guilty, conspiracy to defraud the United States (18 U.S.C. § 371), is a crime involving moral turpitude.<sup>1</sup> Although the IDD did not address this ground of inadmissibility, the AAO notes that the criteria for establishing extreme hardship under section 212(a)(2) of the Act are similar to those for establishing extreme hardship under section 212(a)(6)(C) of the Act, so remanding this matter to the IDD for issuance of a new decision would serve no purpose. The only difference between the criteria is that in a waiver application involving inadmissibility under section 212(a)(2) of the Act, CIS is able to consider hardship to United States citizen children of the applicant. The record in this case contains evidence of hardship to the applicant's United States citizen children, so the AAO finds that adjudication of this petition without a remand to the IDD will not harm the applicant's appellate rights.

Section 212(a)(2) of the Act provides, in pertinent part:

- (A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
  - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

- (h) The Attorney General [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
  - (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -
    - (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
    - (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
    - (iii) the alien has been rehabilitated; or
  - (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is

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<sup>1</sup> See *Jordan v. De George*, 341 U.S. 223 (1951), 95 L.Ed 886, 71 S.Ct 703, *reh. den.* 341 U.S. 956, 95 L.Ed 1377, 71 S.Ct 1001.

established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

The AAO will first address section 212(h)(1)(A) of the Act. As noted previously, the applicant's conviction occurred in 1992—more than fifteen years ago. Accordingly, the AAO must analyze whether the applicant is entitled to a waiver under section 212(h)(1)(A) of the Act.

There is no question as to the passage of fifteen years of time, so the AAO will next analyze the next two issues, which are whether the applicant has rehabilitated, and whether his continued presence in the United States would be contrary to the national welfare, safety, or security of the United States.

The AAO notes that sixteen years with no further infractions have passed since the applicant's criminal violation, so it appears that he has been rehabilitated. The record establishes the stability of his homelife, as he is employed and helps to support the family financially. Nor does the record indicate that the applicant's admission to the United States would be "contrary to the national welfare, safety, or security of the United States."

The record, therefore, reflects that the applicant meets the requirements for waiver of his grounds of inadmissibility under section 212(h)(1)(A) of the Act. However, the grant or denial of the waiver does not turn only on the mere passage of fifteen years of time. 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 applicant's United States citizen wife and children, subsequent rehabilitation, gainful employment, payment of taxes, and the passage of fifteen years since his violation. The unfavorable factor in this matter is the applicant's commission of a crime involving moral turpitude.

The AAO finds that the crimes committed by the applicant were serious in nature and cannot be condoned. In making, forging, counterfeiting, and altering passports and work authorization cards, the applicant undermined the immigration laws and regulations of the United States, the same laws and regulations he now seeks to have applied favorably toward himself. He committed these crimes after having been granted benefits under the "Family Fairness Program" so that he would not have to return to Liberia, which was experiencing political and social unrest at the time. His actions may have endangered the security of the people of the United States. The applicant was a grown man in his forties when he committed the crimes at issue here; they cannot be written off as youthful indiscretions. The unfavorable factors in this matter outweigh the favorable factors. The AAO will not exercise discretion and grant the waiver under section 212(h)(1)(A) of the Act.

Having declined to exercise its discretion and grant the waiver under section 212(h)(1)(A) of the Act, the AAO turns next to the section 212(h)(1)(B) of the Act. The first issue to be addressed is whether the applicant's inadmissibility would impose extreme hardship on a qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion and grant the waiver under section 212(h)(1)(B) of the Act.

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 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that

the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion favorably to the applicant. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The applicant’s wife is a fifty-year-old citizen of the United States. She has been a citizen since 1995. She and the applicant have been married since September 3, 1983. The applicant has three daughters (33, 27, and 20 years of age) and one son (23 years of age). The youngest two children are citizens of the United States; the citizenship status of the two older children is unclear.

The record contains letters from each of the children, all written in September 2002. The children state their great love for the applicant; attest to his good moral character; speak to the closeness of the family and how the applicant’s absence would impact the family negatively; express their fears that the applicant will be killed if he returns to Liberia; and explain how the applicant supports the family financially.

In his September 8, 2002 letter, the applicant states that he has worked hard to put his family together to provide and care for them; that the family is bonded closely; that he knows his criminal activities were wrong and that he regrets them every minute; that his wife and children have already suffered greatly as a result of his crimes and he does not want them to suffer again; that he fears being killed in Liberia; that he has been punished suitably for his crimes and has since conducted himself in an honorable manner; and that his wife and children would experience extraordinary and exceptional hardship if he were to return to Liberia.

In his April 15, 2005 letter, the applicant states that his family depends upon him for financial and emotional support; that family is first and foremost for him; that his wife cannot afford to support the family herself; that the situation in Liberia remains dangerous; emphasizes again the close nature of the family; and apologizes for his criminal transgressions.

In her September 8, 2002 letter, the applicant's wife states that she is emotionally and financially dependent upon the applicant; that the applicant is very close to the children; that the applicant is deeply and seriously involved in the children's school affairs; that the applicant is very hard-working; that she cannot make it alone without the applicant's love and support; that she believes the applicant's return to Liberia will result in the total destruction of the family; that she fears for the applicant's life in Liberia; that she believes the applicant has already been suitably punished for his activities; that she is confident the applicant will continue honoring and obeying the laws of the United States in the future; that the applicant has repented for his wrongdoing; and that the applicant is a model for the children.

The record also contains several articles regarding country conditions in Liberia.

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, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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).

In the instant case, the applicant is required to demonstrate that his wife and children would face extreme hardship in the event the applicant is required to return to Liberia, regardless of whether they join him in Liberia or remains in Maryland without him. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife and children will face extreme hardship if the applicant is required to return to Liberia. The record does not demonstrate that they face greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse or father is removed from the United States. Although CIS is not insensitive to their situation, the financial strain of visiting the applicant in Liberia, the stress associated with maintaining two separate households, and the emotional and financial hardship of separation are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. The applicant has failed to demonstrate that his wife and children (all of whom are adults) cannot function in the United States without him. He has not demonstrated that they would face hardship greater than that normally faced by spouses and adult children facing the removal of a spouse and father.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that his United States citizen wife and children would suffer hardship that is unusual or beyond that normally expected upon the inadmissibility or removal of a spouse or father. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. Having found the

applicant statutorily ineligible for relief, no purpose would be served in discussing 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), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director's denial of the waiver application.

**ORDER:** The appeal is dismissed. The waiver application is denied.