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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **APR 11 2008**

IN RE: Applicant: [Redacted]

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 PETITIONER:



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, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Cote d'Ivoire and citizen of Mali who was found to be 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 having procured admission into the United States by fraud or willful misrepresentation. The applicant is the husband of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The officer-in-charge concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly.

On appeal, counsel states that Citizenship and Immigration Services ("CIS") abused its discretion by failing to thoroughly analyze the facts and evidence in the case, including evidence of extreme physical and emotional hardship to the applicant's wife. Specifically, counsel states that records documenting the qualifying relative's psychological condition and a declaration submitted by the applicant's wife were not given adequate consideration by CIS. Counsel has also submitted additional documentation concerning the applicant's wife's current medical condition and financial situation to support the assertion that denial of the waiver would cause her to suffer extreme hardship.

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

- (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:

- (1) The [Secretary] may, in the discretion of the [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 [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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme

hardship. These factors included 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.

U.S. court decisions have additionally 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 addition, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the court 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. Moreover, the U.S. 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.

In the present case, the record reflects that the applicant is a forty-seven year-old native of Cote d'Ivoire and citizen of Mali who has resided in the United States since March 1999, when he entered using a fraudulent Cote d'Ivoire passport under the name [REDACTED]. The applicant's wife, a U.S. Citizen by birth, is fifty-four years old and suffers from various ailments, including pain as a result of a car accident, a history of anxiety, and a more recent diagnosis of hepatitis C. *See declaration of Joanne Hemmingway*. According to medical records submitted by counsel in support of the appeal on May 18, 2006, the applicant's wife was not yet receiving treatment for hepatitis pending a liver biopsy. According to her declaration, the applicant's wife, whom he married in March 2001, has three adult children and seven grandchildren.

Counsel asserts that the applicant's wife would suffer extreme emotional, physical, and economic hardship if the applicant were deported to Mali. As evidence of this hardship, counsel submitted medical records for the applicant's wife, information on economic and political conditions in Mali, a declaration from the applicant's wife, and a psychological evaluation of the applicant's wife indicating she suffers from depression. The documentation submitted indicates that Mali is among the poorest countries in the world, with a life expectancy of 49, substandard medical care, and a very high degree of risk of exposure to major infectious diseases. French is the official language and 80% of the population speaks Bambara. The country is predominantly Muslim, and only 1% of the population is Christian. *See CIA World Factbook: Mali and Mali: Travel Health at www.wrongdiagnosis.com*. According to the medical records submitted, the applicant's wife is not yet receiving treatment for hepatitis C, but she will need this treatment in the future. In the United States the applicant's wife is receiving medical care at a clinic on a prorated fee scale. She states that her lack of health insurance has prevented her from having a liver biopsy, but the record indicates she does have access to basic health care. Due to conditions in Mali, it appears likely she would not have access to adequate medical care there. Further, according to her declaration, the applicant's wife does not speak French or any other language spoken in Mali, and relocation to Mali would separate her from her three children and seven grandchildren in the United States. All of these hardships, combined with the poor economic

conditions in Mali, would amount to extreme hardship to the applicant's wife if she were to relocate to Mali with the applicant.

Counsel asserts that due to the physical and psychological condition of the applicant's wife, including a diagnosis of hepatitis C, she would suffer extreme hardship if the applicant were deported and she remained in the United States. In her declaration submitted in May 2006, she states, "In July 2006, [REDACTED] will be eligible for health insurance through his employer. At that time I will be able to get the biopsy and begin treatment." Since that time, no evidence has been submitted indicating that she is now insured under the applicant's health plan and receiving treatment. Further, counsel submitted what appears to be a copy of the applicant's wife's entire medical file from the clinics where she has received treatment from 1973 to 2005. No specific evidence was provided to explain her current condition, such as a letter in plain language from her physician describing the treatment and medication needed and any assistance she would need from her family members during and after treatment. The AAO is not in the position to evaluate medical records and reach conclusions concerning the severity of a medical condition, the treatment necessary, or the prognosis for recovery. The only information concerning treatment submitted by counsel was a printout from an online pharmacy website indicating the price of certain drugs that are used to treat hepatitis C. There is no evidence that the applicant's wife has been or will be prescribed these medications or that she would not be able to receive them at a lower cost through the clinic where she receives care or from another source.

Counsel additionally asserts that the applicant's wife would suffer emotional hardship if the applicant were deported to Mali and she remained in the United States. As evidence of this emotional hardship counsel submitted with the I-601 application a report prepared by [REDACTED] a psychologist who evaluated the applicant's wife in 2002. The report indicates that the applicant's wife was the victim of domestic violence in her previous marriage and she also abused alcohol and drugs in the past. It states that the applicant's wife has symptoms "very consistent with the clinical display of Major Depressive Disorder (Recurrent, Severe, without Psychotic Features)." [REDACTED] further states that she is very dependent on the applicant, "who showed himself very capable of providing support, both emotional and financial." [REDACTED] states, "Leaving [REDACTED] without [REDACTED] support would be very detrimental for [REDACTED]'s mental and physical health. Separation from him may result in further deterioration of her depression symptoms . . ." The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letter is based on a psychological evaluation of the applicant's wife, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's wife or any history of treatment for her depression. The conclusions reached in the submitted evaluation, being based on four one-hour interviews, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Further, the evaluation was prepared in July 2002, and there is no evidence that Dr. [REDACTED] or any other mental health professional provided any follow-up treatment, despite the diagnosis of major depression.

Counsel contends that the applicant's wife has a history of treatment for major depression, but the numerous medical records submitted in support of the appeal, which date from 1973 to 2005, do not

contain such a diagnosis. They do indicate that the applicant's wife sought treatment for anxiety on several occasions, and that her condition was possibly exacerbated by her former husband's drug use. Further, medical records from 1989 and 1990 indicate that she stated she was experiencing stress and anxiety, but that her condition did not appear to be acute. She was not prescribed medications, but was referred to counseling to help her cope with her stress. *See Thundermist Health Associates, Inc., Progress Report, September 13, 1989 to February 12, 1990.* There is nothing on the record to establish that the applicant's wife has a history of being treated for depression.

As noted above, the psychological evaluation prepared in 2002 states that separation from the applicant would be detrimental to the applicant's wife's physical and mental health because of the emotional and financial support he provides. There is, however, evidence in the file that suggests the applicant is no longer living with his wife. An entry in the applicant's wife's medical records dated April 14, 2005 lists her home situation as "living with friends." *See Thundermist Health Center, Clinical Visit Sheet, April 14, 2005.* This is contrary to statements made by the applicant during his adjustment of status interview that he and his wife lived alone in their apartment. Further, although the applicant and his wife filed a joint tax return for 2001, they subsequently filed their tax returns separately, with each reporting Head of Household status and different relatives as dependents for 2002 and 2003. These returns were amended to reflect "married filing separately" status in May 2005, but this was only after the CIS District Office in Providence, Rhode Island requested they submit copies of tax returns and W-2 forms for 2002 and 2003. The record contains no explanation of why, after filing jointly for 2001, they began to file their taxes separately the following year. Further, the W-2s for the applicant and his wife list different addresses for 2003, and one of the applicant's 2002 W-2s contains another address, [REDACTED]

Providence, Rhode Island, which is not listed on any other document in the record. There is no other evidence on the record establishing that the applicant and his wife are still residing together. The fact that the applicant and his wife appear to be living separately undermines the conclusions reached by [REDACTED] in 2002 that the applicant's wife relies on the applicant for emotional support such that his deportation would cause her extreme hardship.

Counsel additionally asserts that the applicant's wife would suffer economic hardship if the applicant were deported. As evidence counsel submitted copies of electric and gas bills, a 2006 statement from Chrysler Financial concerning the applicant's wife's 2005 PT Cruiser, for which she pays \$376 per month, and a declaration from the applicant's wife stating she could not survive on her income alone. The record indicates that the applicant's wife is employed and does not rely on the applicant for complete financial support. Further, as noted above, there is evidence that the applicant and his wife are not living together, which raises doubt as to whether he is supporting her financially. Further, even if the applicant is providing this support, the loss of his income and the resulting economic detriment would be a common result of deportation. The mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See INS v. Jong Ha Wang, supra.*

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. Citizen spouse would suffer extreme hardship if he were deported and she remained in the United States. 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(i) 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.