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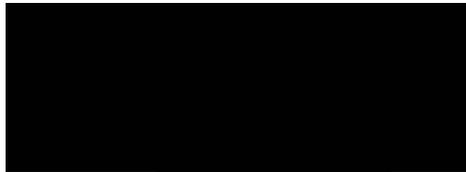
U.S. Department of Homeland Security
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Washington, DC 20529



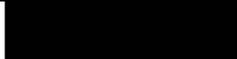
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **APR 17 2008**

IN RE:



PETITION: 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, Chief
Administrative Appeals Office

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

The applicant, a citizen of Guinea, 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 seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and reside with her United States citizen husband.

The Director concluded that the applicant had failed to establish that extreme hardship would be imposed on his wife, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. On appeal, counsel contends that the applicant's husband, a citizen of the United States, would suffer extreme hardship if the applicant were required to return to Guinea. The entire record was reviewed and considered in rendering a decision on the appeal.

Regarding the applicant's grounds of inadmissibility, the record establishes that the applicant entered the United States, fraudulently, in 1999 by presenting the passport and visa of another person in order to gain entry. Thus, the applicant entered the United States by making a willful misrepresentation of a material fact (her identity) in order to procure entry into the United States. Accordingly, the applicant 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). The applicant does not dispute her inadmissibility; rather, she is filing for a waiver of her inadmissibility.

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

- (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.

A section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband. 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).

The applicant is required to demonstrate that her husband would face extreme hardship in the event the waiver application is denied, regardless of whether he joins her in Guinea or remains in Rhode Island without her.

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, 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 (9th 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 United States 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. In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted), the BIA held 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.

The record reflects that the applicant’s husband is a thirty-eight-year-old citizen of the United States. He and the applicant have been married since January 16, 2002. **They have one daughter, born December 9, 2002, who is a citizen of the United States.**

The record contains two affidavits from the applicant’s husband. In his first affidavit, attested in 2004, the applicant’s husband explains that his grandparents raised him; his father was not involved in his upbringing; that he left home at the age of 16 and lived in a shelter; that he did not go to school and did not work; that he was involved in selling a variety of drugs; that he began having seizures at the age of 19 and was diagnosed with a malignant brain tumor; that he was given five years to live by his doctor; that he had surgery to remove the tumor; that he began experiencing vision problems after the surgery; that he underwent chemotherapy and radiation treatment for one year; that he could not work during his year of treatment and received Supplemental Security Income (SSI) as his only support; that he robbed a bank in

an attempt to help his mother and sister, who were living in poverty; that he served eight years in federal prison; that, while in prison, he learned that both his mother and sister were infected with Human Immunodeficiency Virus (HIV); that he decided he needed to pull himself together, and completed a year of college while in prison; that he was released from prison in 1998; that he met the applicant in 2000; that the applicant was understanding, and he felt comfortable around her; that the applicant has provided him with the security he has always lacked; that the applicant gave him hope for the future; that the applicant drives for him and their daughter; that he is the couple's daughter's primary caretaker; that he relies upon the applicant for "everything"; that his life was nothing before he met the applicant; that he has suffered a great deal in life—he lost part of his brain to surgery, lost his eyesight, has been homeless, has been in prison, has lost his dear sister—and that if he loses the applicant, he will have no reason to live.

In his second affidavit, attested in 2006, the applicant's husband states that he has been depressed and anxious his entire life; that, before he met the applicant, he thought feeling depressed and angry were normal; that the applicant encouraged him to seek help with such feelings; that his physical problems had always overshadowed his emotional problems, so he placed such emotions on the backburner; that he was able to work for a few months as for a roofing company in 2003—his employer provided transportation, as he could not drive—and he performed such tasks as emptying the truck and clearing the ground of debris that had fallen from the roof; that his vision problems prohibit him from driving; that the applicant does all the driving for the family; that they cannot afford to pay for daycare; that the applicant's income of \$14 per hour, and his own SSI payments, are the family's only income; that he could not survive on his SSI income alone; that he could not relocate to Guinea, as he needs to see his physician every five months to check on his eyes and his seizures; that his seizures are controlled by medication; that the applicant is his comfort and his anchor; and that he will not be able to survive without the applicant by his side.

The record also contains a letter from [REDACTED] O.D., dated May 2, 2006. [REDACTED] confirms that the applicant's husband had a pituitary tumor removed in 1987; that, as a result, he has visual defects in both eyes; that he should not drive an automobile; that he should not work as a laborer; and that, if his field of vision does not improve, he should join IN-SIGHT.¹

The record also contains a letter from the Social Security Administration confirming that the applicant's husband receives \$687.30 in monthly disability benefits (\$88.50 is deducted for health insurance).

The record also contains two psychological evaluations from [REDACTED], Ph.D. Dr. [REDACTED] reports that the applicant's husband's symptoms are consistent with major depressive disorder and adjustment disorder with anxiety; that, without the applicant's assistance he will have difficulty maintaining his current level of medical treatment, as he cannot drive alone; that the long-lasting threat of separation from the applicant may cause emotional and physical hardships; that the applicant's husband has very limited capacities for coping with current and future stress; and that the applicant's suicidal thoughts are a subject of concern.

The record also contains copies of visual and neurological medical reports regarding the applicant's medical conditions.

¹ See <http://www.in-sight.org> (accessed February 27, 2008). Known formerly as the Rhode Island Association for the Blind, IN-SIGHT describes itself on its website as an organization designed "to inspire confidence, build skills, and empower people who are blind and visually impaired to become full[y] integrated, equally valued members of society by providing diverse services that produce opportunities and choices."

The AAO has carefully reviewed and considered each of the numerous letters, affidavits, medical records and reports, and other documents contained in the record in reaching its decision, and takes particular note of the May 2, 2006 letter from Dr. Rowey.

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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

The AAO finds that the applicant's husband would face extreme hardship if the applicant were required to return to Guinea. In reaching its conclusion, the AAO takes particular note of the evidence regarding the applicant's husband's vision impairment submitted on appeal. If he remains in the United States without the applicant, he would face difficulty in managing his daily affairs, as he cannot drive a car. [REDACTED]'s letter confirms that the applicant's husband suffers from a serious vision impairment, which affects his life significantly. He is unable to hold gainful employment, and he receives a monthly disability benefit from Social Security Administration. His monthly benefit payment would not be enough to support both himself and the couple's daughter. The AAO also notes the applicant's husband's previous history with cancer and seizures, as well as [REDACTED]'s findings regarding his major depressive disorder and adjustment disorder with anxiety. When viewed cumulatively, these factors rise to the level of extreme hardship.

The AAO also finds that he would face extreme hardship if he were to accompany the applicant to Guinea. A citizen of the United States by birth, the applicant does not speak that country's language. In addition to managing his vision impairment, the applicant must undergo regular checkups to confirm that his brain tumor had not returned. If he were to move to Guinea, he would lose access to his current medical providers. Again, those factors, combined with cultural differences, cumulatively rise to the level of extreme hardship.

Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the 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 the applicant's husband would face if the applicant were to return to Guinea, regardless of whether he accompanied her or remained in the United States, her United States citizen spouse, an approved relative petition, gainful employment, and the passage of nine years since the immigration violation. The unfavorable factors in this matter are the applicant's willful misrepresentation to an official of the United States Government in seeking to obtain admission to the United States, and periods of unauthorized presence.

While the AAO does not condone her actions, the AAO finds that the hardship imposed on the applicant's husband as a result of her inadmissibility outweighs the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is warranted.

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. Section 291 of the

Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

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