identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

U.S. Citizenship and Immigration Services

H5

[redacted]

DATE: APR 2 7 2012 OFFICE: ACCRA, GHANA FILE: [redacted]

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 APPLICANT:

[redacted]

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Cameroon who presented a Belgian passport which did not belong to him in an attempt to transit through the United States to Canada. He 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 attempted to procure a benefit under the Act through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Fiancée. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. Citizen spouse and child.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated September 25, 2009.

On appeal, counsel for the applicant contends he is not inadmissible under section 212(a)(6)(C)(i) of the Act because he presented the Belgian passport in order to transit through the United States to Canada, which is not a benefit under the Act. Counsel adds that the applicant in fact did travel to Canada, not the United States. Counsel asserts that even if the applicant remains inadmissible for fraud or misrepresentation, he has submitted sufficient evidence to show his spouse would experience extreme hardship if she relocated to Cameroon and if she remains separated from the applicant.

The record includes, but is not limited to, evidence of birth, marriage, divorce, residence, and citizenship, financial documents, medical records, phone records, photographs, evidence of country conditions in Cameroon, articles on health care in Cameroon, statements from the applicant and his spouse, and other applications and petitions filed on behalf of the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

In the present case, the record reflects that on August 28, 2005 the applicant presented a counterfeit Belgian passport in the name of [redacted] to U.S. immigration officials in New York, advising them of his intention to transit to Canada. The applicant arrived in Canada on that date. Counsel contends that the applicant did not seek to procure a visa, other documentation, admission into the United States, or a benefit under the Act, and is therefore not inadmissible under section 212(a)(6)(C)(i) of the Act. Counsel cites cases and regulations on the Transit Without a Visa Program (TWOV) in support.

Counsel acknowledges that the TWOV program was suspended on August 2, 2003, more than two years before the applicant arrived in the United States. Despite this acknowledgment, counsel focuses on the applicant's travel in light of TWOV requirements, instead of on transit requirements in place on the date of the applicant's travel. When the applicant arrived in the United States, aliens who wished to transit through the country could do so if they qualified under the requirements of section 217 of the Act, known as the Visa Waiver Program, with a transit (C) visa, or with a visa limited to transit to and from the United Nations Headquarters District. *See* section 101(a)(15)(C) of the Act, *see also* 8 C.F.R. § 214.2(c). By presenting a Belgian passport without a nonimmigrant United States visa to immigration officials, the applicant procured transit through the United States under the Visa Waiver Program, which, contrary to counsel's assertions, is a benefit under the Act. *See* section 217 of the Act, *see also* 8 C.F.R. §217.2(d) ("An alien who is in transit through the United States is eligible to apply for admission under the Visa Waiver Pilot Program, provided the applicant meets all other program requirements.")[1] Moreover, to qualify for admission through the Visa Waiver Program, an applicant must possess a valid, unexpired passport, which was not the case with the applicant. *See* 8 C.F.R. §217.2(b). Therefore, the AAO concludes that in presenting a Belgian passport which did not belong to him to U.S. immigration officials, the applicant procured a benefit under the Act, namely transit through the United States, through fraud or misrepresentation. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. Citizen spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission 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).

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

[1] It is noted that if the applicant had presented his own passport from Cameroon without obtaining a C non-immigrant visa, he would have been ineligible to transit through the United States.

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.

The applicant's spouse asserts she experiences financial difficulties given the present separation from the applicant. She submits evidence showing that since February 2010 she has received unemployment benefits, and that her house is currently in foreclosure. Counsel contends the applicant's spouse will soon be homeless. The applicant's spouse also claims that she has had to send money to the applicant because he cannot find a job in Cameroon, which compounds her financial difficulties. Evidence of money transfers is submitted in support.

The applicant's spouse adds that she has been depressed and stressed due to the applicant's immigration situation, submitting notes from a visit to a medical services provider in support. Articles on depression are also submitted. Counsel indicates that the applicant's spouse has a cousin in the United States, and that her brother and father live in Cameroon.

With respect to relocation to Cameroon, counsel asserts that country conditions in Cameroon are poor, the applicant's spouse has no family members in Cameroon who are able to assist and support her, and that she is unlikely to find employment in Cameroon. Counsel moreover states that the applicant would be unable to meet her financial obligations if she relocated, she would have difficulty accessing medication for her depression, and her son, who contracted malaria in Cameroon, would suffer from medical difficulties. The applicant's spouse adds that she fears for her safety because she and the applicant were victims of armed robberies, and she fears discrimination because she is no longer a citizen of Cameroon.

The applicant has submitted sufficient evidence to demonstrate that his spouse experiences financial difficulties in the United States. The record reflects that the applicant's spouse has been unemployed since February 2010, and that she has received unemployment benefits from the Minnesota Unemployment Insurance Program. The record also indicates that the spouse's house, which she bought in 2005, is in foreclosure because she has not made mortgage payments as scheduled. Furthermore, the record contains evidence of several money transfers to the applicant in Cameroon which show additional financial strain on the applicant's spouse.

However, the record does not contain sufficient evidence supporting statements of medical hardship experienced by the applicant's spouse, or with respect to the child's medical conditions. In support of these assertions counsel submitted copies of medical records for the applicant's spouse and child. The records consist of physician's "progress notes" for medical care in 2010 and handwritten notes, some without translation, from a facility in Cameroon.[2] Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing

[2] The AAO cannot consider documents containing foreign language on appeal without a certified English translation as required by 8 C.F.R. § 103.2(b)(3).

extreme hardship. The evidence on the record is insufficient to establish, however, that the applicant's spouse or child suffer from such conditions. The record contains copies of medical records, including hand-written progress notes containing medical terminology and abbreviations that are not easily understood, and laboratory results. The documents submitted were prepared for review by medical professionals or are otherwise illegible or indiscernible and do not contain a clear explanation of the current medical condition of the applicant's spouse or child. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

The applicant's spouse asserts that she experiences depression without the applicant. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant remains in Cameroon without his spouse.

The applicant's spouse is a native of Cameroon, and has spent some time in the country as an adult. Furthermore, the record reflects that she has more family ties in Cameroon than in the United States, as she has a cousin who lives in Minnesota, and her father and brother reside in Cameroon. The record therefore reflects that the applicant's spouse has some familiarity with life and culture in Cameroon. Additionally, although the record indicates that the spouse has had difficulty finding employment in the United States, the applicant has failed to submit evidence to support an assertion that a person with the spouse's experience would be unable to find adequate employment in Cameroon and meet her financial obligations. The record also fails to indicate whether the spouse's depression would be alleviated if she were reunited with the applicant, though there is evidence that the applicant's depression medication is difficult to obtain in Cameroon. The AAO acknowledges that the U.S. Department of State has indicated that crime is a problem in Cameroon; however, assertions that the applicant and his spouse were specifically targeted as victims of armed robbery are unsupported by the record. Although the spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of*

Obaigbena, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Although the AAO acknowledges that the applicant's spouse would face difficulties in Cameroon, we do not find evidence of record to show that her hardship would rise above the distress normally created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the financial, emotional, medical, and other effects of relocation on the applicant's spouse are in the aggregate above and beyond the distress normally created, the AAO cannot find that she would suffer extreme hardship upon relocation to Cameroon.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for a 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.