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APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 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, Atlanta, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of the Republic of Cameroon who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for procuring a fraudulent Form I-94 and using it to obtain a fraudulent Social Security Card to work in the United States. *See District Director Decision*, dated July 15, 2005. The applicant is the spouse of a U.S. citizen who asserts that he is not inadmissible and, in the alternative, he 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.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on his spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Id.*

On appeal, counsel asserts that the district director erroneously found the applicant inadmissible for fraudulently obtaining an immigration benefit, as the act of buying a social security card to use to obtain employment does not make the applicant inadmissible as charged. *Notice of Appeal to the Administrative Appeals Office (AAO) (FORM I-290B)*, filed August 9, 2005. Counsel also asserts, in the alternative, that the district director abused her discretion in finding that the applicant did not show extreme hardship to a qualifying relative.

The record reflects that the applicant entered the United States legally with a B2 visa on May 4, 1999. The applicant submitted a statement with his Form I-601 admitting that after he entered he paid money for a fake Form I-94 that he used to apply for a social security card in order to get a job. *Affidavit of Kornelio G. Nkwei*, dated August 21, 2003. As part of an Atlanta-based investigation of the acquisition of such documents, a Department of Justice (former INS) investigator interviewed the applicant on August 14, 2003 when the applicant made an application for an employment authorization card at the Atlanta office. The investigator noted that the applicant “submitted a fraudulent H-1B I-94 at the Atlanta West SS office.” *Report of Investigation (Form G-166C)*, dated August 15, 2003. The investigator also reported that the applicant “stated he had no intentions of returning to Cameroon once he entered the US.” *Id.*

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

In general.—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.

The Department of State Foreign Affairs Manual (FAM) offers interpretation regarding the statutory reference to misrepresentations under section 212(a)(6)(C)(i) of the Act. Title 9, FAM § 40.63 N4.3 provides, in pertinent part that “[f]or a **misrepresentation** to fall within the purview of INA 212(a)(6)(C)(i), it must have been practiced on an official of the U.S. Government--generally speaking, a consular officer or an INS [now CIS] officer” (emphasis added).

The district director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act because “[h]e obtained a fraudulent/counterfeit I-94 . . . [he] used that I-94 to apply and secure a Social Security Card, and thereafter used that Social Security card to gain employment opportunity.” *District Director Decision, supra*. These actions, however, are not grounds for inadmissibility under section 212(a)(6)(C)(i) of the Act. The BIA has made it clear that “working in the United States is not ‘a benefit provided under this Act,’” and that the use or possession of a fraudulent document is not the equivalent of fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act. *See Cervantes-Gonzalez, supra* at 571 (Villageliu and Schmidt, JJ., concurring) (clarifying that the benefit sought by the respondent was the right to travel with a U.S. passport and that the decision of the majority “may be misinterpreted as suggesting that using the fraudulent passport to obtain employment is obtaining a benefit under the Act”). In his concurring opinion, Judge Villageliu adds, “It is long settled that inadmissibility for immigration fraud does not ensue from the mere purchase of fraudulent documents, absent an attempt to fraudulently use the document for immigration purposes.” *Id.*, citing *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975); *Matter of Sarkissian*, 10 I&N Dec. 109 (BIA 1962); *Matter of Box* 10 I&N Dec. 87 (BIA 1962); *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992).

The record reflects that the applicant admitted that he bought a fake I-94 after he entered the United States and used it to obtain a Social Security card. These actions, though unlawful, were not for the purpose of procuring “a visa, other documentation, or admission into the United States or other benefit provided under [the INA],” as his stated purpose was to seek a job. Moreover his misrepresentation was not made to a consular officer or a CIS officer. The applicant is therefore not inadmissible based on the reasons set forth in the district director’s opinion.

However, the record also reflects that the applicant remains inadmissible under section 212(a)(6)(C)(i) of the Act for having procured a B2 (visitor) visa by misrepresenting his intentions at the time of the visa application. The Department of State Foreign Affairs Manual states that, “in determining whether a misrepresentation has been made, some of the most difficult questions arise from cases involving aliens in the United States who conduct themselves in a manner inconsistent with representations they made to the consular officers concerning their intentions at the time of visa application. Such cases occur most frequently with respect to aliens who, after having obtained visas as nonimmigrants, . . . [a]pply for adjustment of status to permanent resident . . .” *DOS Foreign Affairs Manual*, § 40.63 N4.7(a)(1). In this case, the applicant admitted that he did not intend to return to Cameroon once he entered the United States, and his actions upon arrival tend to confirm his statement. *See Report of Investigation, supra*.

The AAO conducts the final administrative review and enters the ultimate decision for USCIS on all immigration matters that fall within its jurisdiction. The AAO reviews each case de novo as to all questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. Because the AAO engages in de novo review, the AAO may consider grounds for denial of an application or petition that fails to comply with the technical requirements of the law, without remand, even if the district or service center director does not identify all of the grounds for denial in the initial decision. *See Helvering v. Gowran*, 302 U.S. 238, 245-246 (1937); see also, *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *affd.* 345 F.3d 683 (9th Cir. 2003). Upon review, the AAO finds the applicant inadmissible for having procured his visa by misrepresenting a material fact.

Section 212(i) of the Act provides:

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 inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant himself is not a permissible consideration under the statute and is relevant only insofar as it results in hardship to a qualifying relative in the application. In this case, the applicant's U.S. citizen spouse is his only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(i) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 applicant 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 suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

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)

U.S. court decisions have found that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to

the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant’s spouse must be established in the event that she accompanies him and resides in Cameroon or in the event that she remains 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.

In this case, the record reflects that the applicant was born in Cameroon in 1969 and lived there until 1999, when he came to the United States; his wife was born in the United States (Georgia) in 1973. They were married in Georgia in 2001 and currently reside and work in Georgia. The record includes tax records from 2001, 2002 and 2003; their joint tax returns show that the applicant earned the bulk of the family’s income, \$47,192 in 2003 and \$33,800 in 2002; during those years, his wife earned \$12,155 and \$11,900 respectively. The record also contains a statement of employee benefits for the applicant listing his wife as a dependent for purposes of health insurance. The applicant submitted a letter stating how much he loves his wife, that his wife is a very big factor in his life, and they have plans for their future, including buying a house and raising a family; he also stated that when his mother died he could not go home for the funeral because of a “foreseen threat” and that he could get killed if he returned to Cameroon. He stated that his only family is now his wife and in-laws in the United States. His wife also submitted a letter noting that the applicant is very dear to her and that she cannot afford to lose him; adding that the uncertainty of his immigration status is causing them both a lot of stress and that she fears that “he might want to go and join his family elsewhere outside the US.” The AAO notes that there is some inconsistency as to the applicant’s ties to family and community in Cameroon, as according to the *Report of Investigation, supra*, the applicant referred to his brother in Cameroon in connection with his attempt to get a visa. The AAO also notes that the record is silent as to conditions in Cameroon, whether in general or specific to the applicant’s situation. His statements regarding any danger that he would face there that might cause hardship to his wife cannot be given much weight. 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)).

The record shows that the applicant lives in Georgia, where she was born and raised; her parents also reside in Georgia. She has worked consistently in Georgia as a cashier since 1998. There is no evidence that she has any connection to Cameroon other than that her husband and his family are from there. Although the record is silent as to conditions in Cameroon that would represent a hardship to her if she decided to move there with her husband to avoid separation, she would clearly suffer the loss of family and community ties built up over her lifetime in Georgia. If she decided to remain in the United States, the AAO recognizes that she would suffer emotionally from separation from her husband. Her household income would also be significantly reduced without her husband’s contribution, but there is no indication that she would be unable to continue to work and support herself, or that she would be unable to obtain health benefits from her employer. In the United States she would also maintain her contacts with family and community. The applicant’s spouse therefore faces the same decision that confronts others in her situation – the decision whether to remain in the

United States or relocate to avoid separation. Although she would face some difficulties in either case, there is no evidence in the record indicating that any hardship she would experience would be extreme.

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 spouse faces extreme hardship if her husband is refused admission. 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 individuals who are deported. The BIA has generally not found financial hardship alone to amount to extreme hardship. *Matter of Cervantes-Gonzalez*, *supra*, at 568 (citations omitted).

The record does not contain sufficient evidence to show that the hardship faced by the qualifying relative rises beyond the common results of removal to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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 rests with the applicant. See 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.