



U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: ATLANTA, GA

Date: JUN 28 2007

IN RE:

[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:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Atlanta, Georgia, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Côte d'Ivoire who is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and the stepfather of two U.S. citizen children. 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 spouse and stepchildren.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated August 23, 2005.

The record reflects that, on August 12, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed on his behalf by his spouse, [REDACTED]. On November 17, 2004, the applicant appeared at the Citizenship and Immigration Services' (CIS) Atlanta, Georgia District Office. He testified that, on May 6, 1996, he entered the United States by presenting a counterfeit passport. On January 21, 2005, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his spouse.

On appeal, counsel contends that denial of the applicant's waiver would result in extreme hardship to the applicant's spouse. *See Counsel's Brief*, dated November 15, 2005. Counsel, in support of her assertions, submits the referenced brief, a psychological report, updated country condition reports and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (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.

The district director based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the applicant's admission to obtaining entry into the United States by fraud in 1996. On appeal, counsel does not contest the district director's determination of inadmissibility.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship in 212(i) cases. Thus, hardship to the applicant's U.S. citizen stepchildren will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

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 has held:

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).

Since an applicant's qualifying relative is not required to reside outside of the United States as a result of denial of the applicant's waiver request, an applicant must establish that the qualifying relative would suffer extreme hardship whether he or she remained in the United States or accompanied the applicant to the foreign country of residence.

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 record reflects that, on August 2, 2002, the applicant married Ms. Haidara, a U.S. citizen by birth. The applicant and [REDACTED] do not have any children together. The applicant has a 13-year old son from a previous relationship who is a native and citizen of Côte d'Ivoire who does not appear to have any legal status in the United States. [REDACTED] has a twelve-year old son and an eleven-year old son from a previous

relationship who are both U.S. citizens by birth. The record indicates that the applicant is in his 30's and [REDACTED] is in her 20's.

Counsel asserts that the applicant has all but legally adopted [REDACTED] children and provides both financial and emotional support to his spouse and her children. Counsel asserts that the applicant is the only father [REDACTED]s children have ever known. Counsel asserts that the combination of the applicant's and [REDACTED] incomes provides them with a comfortable life in which they can pay their bills and [REDACTED] can continue her higher education. Counsel asserts that without the applicant's income [REDACTED] would be unable to continue to support her children in the manner she now does. Counsel asserts that [REDACTED] would be unable to continue her studies as a nursing student because she is only able to afford the costs with the financial assistance of the applicant and, without the applicant, there would be no one to care for her children at night while she attends classes. Counsel asserts that, as a result of the denial of the waiver, both the applicant and [REDACTED] suffer from anxiety and depression.

[REDACTED] in her statement, indicates that, during the years she and her children have known him, the applicant has been a pillar of support for them and that they would be faced with sadness if he were not a part of their lives. She states that only by working opposite hours and sharing the childcare responsibilities equally are she and the applicant able to afford their mortgage and household bills. She states that she recently started attending college classes and she would be unable to attend those classes without the applicant's presence because he cares for the children while she attends those classes and without his income she would be unable to afford the tuition and books without going into debt. She states that if she had to take on debt to pay for her college education she would probably not do as well in school because she would worry about the bills and her children. She states that the applicant enables her to focus on her studies and supports her dream of obtaining a higher education. She states that the applicant is the only father her children have ever known and that she has seen how her own mother and siblings suffered without a father in their lives and cannot allow this to happen to her own children.

A psychiatric report, prepared by [REDACTED], states that [REDACTED] suffers from anxiety and depression at the thought of the applicant being torn away from her and her two sons. The psychological report states that [REDACTED] would face significant financial hardships, have to drop out of her college nursing program, put her sons into daycare and raise them without the only father they have ever known.

[REDACTED] evaluation is based on a single 45-minute interview with the applicant and [REDACTED]. While the input of any medical health professional is respected and valued, a psychiatric report based on one brief interview does not reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional, thereby rendering [REDACTED] findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Moreover, the record does not contain evidence that [REDACTED] has received treatment or evaluation for anxiety and depression and [REDACTED] also fails to indicate that [REDACTED] requires further evaluation or medical assistance. The AAO notes that the evaluation was conducted after the Form I-601 was denied and that there is no mention of [REDACTED] psychological problems in the statement she submitted in support of the Form I-601. Accordingly, [REDACTED]s evaluation will be given little evidentiary weight. There is no evidence in the record, besides the psychological report, that [REDACTED] suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon removal. While the AAO acknowledges that [REDACTED] would experience anxiety and depression as a result of separation from her spouse and the separation of her children from their stepfather, the record does not establish that these reactions constitute

hardships that are beyond those commonly suffered by aliens and families upon removal. Although it is unfortunate that [REDACTED] may be unable to further pursue her college studies, this is also not a hardship beyond those commonly suffered by aliens and families upon removal. Additionally, the record reflects that [REDACTED] has family members, such as her mother and siblings, in the United States who may be able to assist her physically and emotionally in the absence of the applicant.

The earnings statements in the record indicate that [REDACTED] earned \$32,993 in 2003 and \$35,694 in 2002. The record shows that, even without assistance from the applicant, [REDACTED] has, in the past, earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. While the AAO acknowledges that [REDACTED] may have to lower the family's standard of living, the record does not contain any evidence to suggest that [REDACTED] would be unable to support herself and her children without the financial support of the applicant. Further, although it is unfortunate that [REDACTED] would essentially become a single parent, this is also not a hardship beyond those commonly suffered by aliens and families upon removal. Accordingly, the record does not support a finding of financial loss that would result in an extreme hardship to [REDACTED] if she had to support herself and her children without additional income from the applicant, even when combined with the emotional hardship described above.

Counsel asserts that [REDACTED] would suffer immensely should she have to accompany the applicant to Côte d'Ivoire. Counsel asserts that accompanying the applicant to Côte d'Ivoire would be [REDACTED] only option in order to keep her family together and that she should not have to be forced to choose between maintaining her family and living in the United States.

[REDACTED] in her affidavit, states that the applicant's country is torn apart by civil war and it is not a safe environment in which to raise her two children. She states that she is not familiar with the language and culture and the move would be traumatic to her two sons. She states that she would be unable to continue her studies and would be forced to live under a much lower standard of living, losing everything that she has worked for in the United States.

Having analyzed the hardships counsel and [REDACTED] claim [REDACTED] will suffer if she were to accompany the applicant to Côte d'Ivoire, the AAO finds that in aggregate they constitute extreme hardship. [REDACTED] asserts that she would be unable to pursue her nursing degree. An inability to pursue a chosen profession is not a hardship that is uncommon to a spouse accompanying an applicant to a foreign country. The record does not demonstrate that Ms. Haidara and the applicant would be unable to obtain any employment in Côte d'Ivoire and economic detriment of some type is not unusual or extreme. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir.1986). As discussed above, there is no evidence in the record to suggest that [REDACTED] suffers from a physical or mental condition that could not be treated in Côte d'Ivoire. While country conditions reports indicate that President Gbagbo and New Forces leader Guillaume Soro announced in March 2007 they had agreed to a peace agreement aimed at reunifying the country and holding new elections and the peace accord has already seen great success and has made strides in returning the country to normalcy, U.S. Department of State reports still advise U.S. citizens to defer travel to Côte d'Ivoire and note that the security situation in Abidjan, the city in which the applicant's family are located, is unpredictable. While the hardships that would be faced by [REDACTED] in relocating to Côte d'Ivoire--adjusting to the culture, language, economy, environment, separation from friends and family, and an inability to obtain the same opportunities she and her children would receive in the United States--are what would normally be expected by any spouse accompanying a removed alien to a

foreign country, when combined with the current security situation in Côte d'Ivoire, [REDACTED] would experience extreme hardship if she accompanied the applicant to Côte d'Ivoire. However, as previously noted, [REDACTED], as a U.S. citizen, is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, she would not experience extreme hardship if she remained in the United States without the applicant.

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 would face extreme hardship if the applicant were removed from the United States. Rather, the record demonstrates that [REDACTED] would face the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS, Supra; Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish 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, 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. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.