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U.S. Department of Homeland Security  
20 Massachusetts Avenue NW, Room 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

H<sub>2</sub>

PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: BALITMORE DISTRICT OFFICE Date: OCT 18 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 waiver application was denied by the District Director, Baltimore, Maryland, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

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 is the husband of a United States citizen, and 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 with his wife.

The District 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 wife 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.

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 provides that:

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 himself 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 wife. 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 *Mendez*, 21 I&N Dec. 296 (BIA 1996).

Regarding the applicant's grounds of inadmissibility, the record reflects that he misrepresented his marital status at a nonimmigrant visa interview. Although unmarried at the time, he stated that he was married in order to gain admission to the United States. Thus, he attempted to enter the United States by making a willful misrepresentation of a material fact (his marital status). Accordingly, the applicant is

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 his inadmissibility; he admits to having misrepresented his marital status. Rather, he is applying for a waiver of inadmissibility.

The AAO will not address the applicant's assertions regarding his marital status at the time of the nonimmigrant visa interview. The issue before the AAO is not whether the applicant was unmarried at the time he made his misrepresentation. The AAO will accept for the sake of issuing this decision that the applicant was, in fact, unmarried at the time he applied for the nonimmigrant visa. That he committed misrepresentation is not in dispute. Accordingly, the AAO will adjudicate the waiver application on its merits.

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 (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 *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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 wife is a thirty-five-year-old citizen of the United States. She has a daughter from a previous relationship. She and the applicant have been married since January 14, 2002.

In her June 26, 2003 affidavit, the applicant's wife states that she would be devastated if the applicant were to leave her and her daughter; that the applicant means the world to her; that the applicant is a loving husband and devoted father; that the applicant is the only man she has ever known who will do anything for her; that the applicant is the only person who completely understands her; that she and the applicant share a great deal of love; that the applicant takes care of the family; that her daughter knows the

applicant as the only father she has ever known; that they will lose everything if he is required to return to Guinea; that their marriage is a match made in heaven; that she loves the life they share together; and that there are no words to express the way she feels.

In his June 23, 2003 affidavit, the applicant expresses his regret for misrepresenting his marital status in order to gain entry into the United States; states that he is a hard-working man; that he has a lovely family in the United States; that he cannot take care of his family if he is sent back to Guinea; that his family will be homeless if he departs the United States, as he is the sole breadwinner; that he is a very nice person; that he has never had a criminal record; and that he apologizes for not being honest in the beginning.

The record also contains a psychological evaluation from [REDACTED], who interviewed the applicant's wife in October 2003. [REDACTED] states that the applicant has been a stabilizing factor in his wife's life, as he has urged her to return to school and is in general more organized than his wife. He finds that the applicant's wife's personality structure is characterized by a manic quality of thought and behavior, with poor insight and a tendency to see any problems as arising from external factors rather than having any contributions from herself. According to [REDACTED] "[t]esting indicates that she likely meets the criteria for a manic episode, with possible diagnoses of Manic-Depressive Disorder, and a Mixed Personality Disorder."<sup>1</sup> [REDACTED] also notes that the applicant's wife's morbid obesity will most certainly have an impact on her physical health.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the

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<sup>1</sup> The AAO notes that [REDACTED] does not diagnose the applicant's wife with these conditions; rather he states that such a diagnosis is "possible."

difficulties of readjustment to that culture and environment . . . simply are not sufficient.”); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, “the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy”).

In the instant case, the applicant is required to demonstrate that his wife would face extreme hardship in the event the applicant is required to return to Guinea, regardless of whether she accompanies him to Guinea or remains in the United States.

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 wife will face extreme hardship if the applicant returns to Guinea. If she remains in the United States without the applicant, the record fails to establish that she would face greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. As presently constituted, the record fails to establish that the financial strain and emotional hardship she would face would be any greater than that normally be expected upon separation. According to a letter contained in the record, she is employed and earns \$40,000 per year. Such a salary is not consistent with a finding that the applicant’s wife would be “deprived of the means to survive” or “condemned to exist in life-threatening squalor.” The applicant has not established that his wife would be unable to manage her daily affairs in the absence of the applicant.

Nor does the letter from [REDACTED] establish extreme hardship. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter appears to be based upon a single interview between [REDACTED] and 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 the conditions that, according to [REDACTED], she may “possibly” suffer. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [REDACTED]’s findings speculative and diminishing the evaluation’s value to a determination of extreme hardship. Nor was any evidence submitted to document his statements that the applicant’s wife has an “unstable life.” Simply 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)).

Nor has the applicant established that his wife would experience extreme hardship if she were to accompany him to Guinea. The applicant has submitted no evidence or testimony to establish that his wife would experience extreme hardship in Guinea.

In limiting the availability of the waiver to cases of “extreme hardship,” Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States 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*, 96 F.3d 390 (9th Cir. 1996); *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 finds that the District Director properly denied this waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that the applicant's wife would suffer hardship beyond that normally expected upon the removal of a husband.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his wife would suffer hardship unusual or beyond that normally expected upon removal of a spouse. As noted previously, the common results of removal are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. 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), 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 not that burden. Accordingly, the AAO will not disturb the director's denial of the waiver application.

**ORDER:** The appeal is dismissed. The waiver application is denied.