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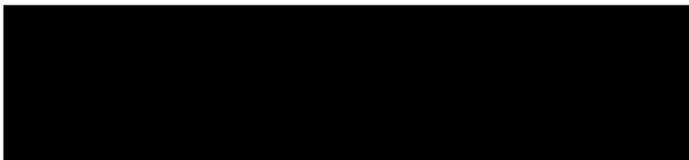
Office: ATLANTA, GA

Date: DEC 01 2006

IN RE:

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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

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

The applicant is a native and citizen of the Ivory Coast who was found to be 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 into the United States by fraud or willful misrepresentation. The applicant has a U.S. citizen spouse and son. 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 family.

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*, at 2, dated October 30, 2006.

On appeal, counsel asserts that the district director erred in denying the Form I-601 based on the extreme hardship that the applicant's spouse and child would face. *Form I-290B*, received November 29, 2006.

The record includes, but is not limited to, counsel's brief, statements from the applicant and his spouse, a statement from the applicant's mother-in-law, a social worker's evaluation letter and country conditions in the Ivory Coast. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on August 18, 2000, the applicant was admitted to the United States with a fraudulent passport.¹ As a result of this misrepresentation, the applicant is inadmissible to the United States.

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

- (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:

- (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

¹ The district director also found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for answering "no" to the question on his adjustment of status application which asks if one has ever obtained entry into the United States through fraud or misrepresentation. *Decision of the District Director*, at 2. Counsel states that the applicant answered "no" to this question, but also that he did not try to hide his manner of entry. *Brief in Support of Appeal*, at 10, dated January 25, 2007. The AAO notes that the applicant listed the assumed name he used to enter the United States in Part 3 of his adjustment of status application. *Applicant's Form I-485, Application to Register Permanent Resident of Adjust Status*, at 2, received June 16, 2004. The applicant also provided his Form I-94, Arrival/Departure Card, at his adjustment of status interview. As the record reflects that the applicant admitted the false name he used to enter the United States on his adjustment of status application, the AAO finds that the applicant did not willfully misrepresent himself when he answered "no" to the aforementioned question.

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 a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant or his child experience is relevant only to the extent it causes hardship to the applicant's spouse. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. Extreme hardship to the applicant's spouse must be established whether she relocates to the Ivory Coast or 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.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she relocates to the Ivory Coast. Counsel states that the Ivory Coast is a war torn country. *Brief in Support of Appeal*, at 6. The applicant's spouse states that the Ivory Coast is an extremely politically unstable country, she does not speak the language and she would fear for herself as a Caucasian female with a bi-racial son. *Applicant's Spouse's Statement*, dated January 12, 2007. The AAO notes the Department of State travel warning for the Ivory Coast which advises U.S. citizens against travel to the Ivory Coast due to safety and security reasons. *Department of State Travel Warning, Ivory Coast*, at 1, dated February 13, 2008. The travel warning states that the Department of State continues to prohibit minor dependents from accompanying U.S. government employees assigned to the embassy in Abidjan, private U.S. citizens are urged to follow the same guidelines and U.S. citizens are urged to defer non-essential travel to the Ivory Coast.² *Id.* Counsel states that the applicant's spouse cannot leave her parents in the United States as she and the applicant are the primary caregivers for her sick mother. *Brief in Support of Appeal*, at 7. The applicant's spouse's mother states that she has a neurological disability. *Applicant's Spouse's Mother's Statement*, dated December 30, 2006. The AAO notes, however, that the record includes no documentary evidence that establishes that the applicant's mother-in-law suffers from a debilitating medical condition. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N

² The AAO notes that on June 9, 2008, the Department of State extended the travel warning for the Ivory Coast. *Department of State Travel Warning, Ivory Coast*, at 1, dated June 9, 2008.

Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Considering the applicant's spouse's separation from her parents, her inability to speak the language (which the record indicates is French) and the safety issues in the Ivory Coast, the AAO finds that extreme hardship has been established in the event that the applicant's spouse relocates to the Ivory Coast.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant is the primary caretaker of his child, he watches the child while his spouse is working, his spouse works late and sometimes on the weekend, and his supplemental income supports his spouse and child. *Brief in Support of Appeal*, at 4. Counsel states that the applicant's spouse's mother has a seizure disorder and the applicant helps care for her and drives her various places. *Id.* at 4-5. Counsel states that the applicant's son would experience immeasurable life long harm if the applicant were deported. *Id.* at 5. The record does not, however, include documentary evidence that the applicant's son would experience immeasurable life long harm or indicate the effect that this would have on the applicant's spouse, the only qualifying relative.

The applicant's spouse was evaluated by a social worker who states:

[The applicant's spouse] presented with depressed affect, and reports periods of fluctuating low energy, and high energy, excessive weight gain, since learning of [the applicant] being deported...[the applicant's child]...is very close to his father...it appears that [the applicant's spouse] is traumatized by the prospect of her husband being deported...She reports and demonstrates symptoms consistent with an Adjustment disorder and Mixed anxiety and Depressed Mood...

Evaluation by J. [REDACTED] at 1-2, dated January 22, 2007.

The AAO notes that the evaluation is based on a single interview with the applicant's spouse and fails to reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional, thereby rendering the social worker's findings speculative and diminishing the evaluation's value to a determination of extreme hardship

The applicant's spouse states:

...we would not survive without [the applicant's] income. [The applicant's] income pays for our food, our clothing, our son's school and unplanned expenses such as flat tires, doctor bills, etc...Our son...is so attached to his father. I cannot imagine how heart wrenching it would be to separate the two of them. Without [the applicant], I would have to leave my job and that would mean a life dependent on the government for child care, food and medical care...My mother has been very ill over the past few years and [the applicant] has been very kind in helping to care for her...

Applicant's Spouse's Statement.

However, the record does not include documentation related to the applicant's spouse's current income and her monthly expenses. It does not, therefore, contain sufficient evidence to establish financial hardship to the applicant's spouse.

The applicant's spouse's mother states:

...He goes above and beyond this in his relationship with his son, providing for his daycare, his home, daily needs of medical care, food, clothing...he goes out of his way to provide help for our daughter...I am no longer able to work due to a neurological disability...[the applicant] has helped me on many occasions when I was unable to do tasks on my own.

Applicant's Spouse's Mother's Statement.

As mentioned previously, the record includes no documentary evidence that establishes that the applicant's mother-in-law suffers from a debilitating medical condition.

Based on the record, the AAO finds that extreme hardship has not been established in the event that the applicant's spouse remains in the United States.

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 aliens being removed.

The AAO notes that a review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's fiancé caused by the applicant's inadmissibility to the United States. 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 remains entirely 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.