



U.S. Citizenship  
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FILE:

Office:

PHOENIX, AZ

Date:

JAN 25 2008

IN RE: Applicant:

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant is a native and citizen of Mali. The record indicates that the applicant obtained and utilized a passport and nonimmigrant visa bearing another individual's name to enter the United States on December 4, 1993. The applicant was thus 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 procured entry to the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and 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.

The acting 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 Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated January 30, 2006.

Counsel for the applicant submitted the Form I-290B, Notice of Appeal to the Administrative Appeals Unit (Form I-290B) on February 14, 2006. On the Form I-290B, counsel for the applicant requested 30 days to submit a brief and/or evidence to the AAO and stated that the decision on the Form I-601 "...erred on legal and factual grounds. It failed to examine the totality of circumstances surrounding the qualifying relative's hardship. The decision cursorily examined the medical opinions relating to the qualifying relatives..." *Form I-290B*, dated February 14, 2006. On October 23, 2007, the AAO sent a fax to counsel, stating that to date, the AAO had no record that any further evidence or brief was ever received, and requesting that counsel submit a copy of the brief and/or evidence to AAO, along with evidence that it was originally filed with the AAO within the 30 day period requested, within five business days. Counsel responded by fax on October 25, 2007; in his fax, counsel stated that the applicant "...incorporates by reference the letter-brief submitted in support of the I-601 waiver dated May 9, 2005. The points and authorities stated in the brief apply equally on appeal..." *Fax from Counsel*, dated October 25, 2007. The record is thus considered complete and will be reviewed and considered in rendering this decision,

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.

Based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 immigrant 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...

Section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant cannot be considered, except as it may affect the applicant's spouse.

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These 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.

This matter arises in the Phoenix district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "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). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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 the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

Counsel first contends that the applicant's spouse suffers from numerous medical conditions that require the applicant's presence in the United States. As stated by the applicant's spouse, "...I suffer from fibroids tumors; which also has caused me to suffer from life threatening anemia...I have infertility problems and the only way we can get pregnant is with In Vitro Fertilization. I currently have a hypothyroid and take Levothroxine and will have to be on medication for the rest of my life. I have heavy periods due to fibroids and because of heavy periods I currently take vitamins and iron supplements so I won't once again suffer from life threatening anemia. I also take prescription Naproxen for cramps due to fibroids. I take Allegra and Nasonex for allergies..." *Declaration of* [REDACTED], dated May 9, 2005

The medical documentation provided does not elaborate on what specific assistance the applicant's spouse needs from the applicant due to her medical conditions and what specific hardships she would face were the applicant residing abroad. In addition, according to a letter provided by the applicant's spouse's employer, [REDACTED], in a letter dated May 9, 2005, the applicant's spouse has been employed full-

time with said entity since March 1988; her medical conditions clearly do not hinder her ability to work, obtain promotions and assist in supporting her family. Moreover, the record indicates that the applicant's spouse has numerous relatives residing in the State of Arizona, including her father and step-mother, a brother, and three step or half siblings; counsel has failed to establish that said relatives would not be able to assist the applicant's spouse should the need arise after the applicant has been removed from the United States. Finally, while the AAO sympathizes with the applicant and her spouse regarding their infertility problems, all couples separated due to immigration violations have to make alternate arrangements if they want to conceive. It has not been documented that such arrangements rise to the level of exceptional hardship.

Counsel then asserts that the applicant's spouse would experience emotional hardship were the applicant removed from the United States. To support this assertion, counsel provides a Behavioral Health Evaluation from [REDACTED] Licensed Marriage and Family Counselor, based on an interview with the applicant's spouse. [REDACTED] concludes that the applicant's spouse has "...two precious pearls in her life: her husband [the applicant] and her job. They both would be destroyed if her husband is deported. Her personal strengths did not seem capable of outweighing her underdeveloped skills...Her high level of actual personal and professional proficiency...seemed to depend upon how healthy her dependent relationships have become for her in life. There was no question about her awareness about the suffering she would endure if she would have to start her life all over again..." *Behavioral Health Evaluation from [REDACTED] Ph.D., Licensed Marriage and Family Counselor*, dated March 11, 2005.

Although the input of any mental health professional is respected and valued, the AAO notes that the submitted evaluation appears to be based on a single interview between the applicant's spouse and Dr. [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on an apparent single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental professional, thereby rendering the findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The applicant's spouse further references in her declaration that the applicant "...is a very caring man. I fell in love with him because of his caring nature... [REDACTED] [the applicant] is the main cook in our house. He cooks 90% of the time.. [REDACTED] also keeps up the yard at our house and even when he has been on the road he comes home and does the yard work. [REDACTED] also fumigates the yard and house for bugs. He changes the filters and smoke detector batteries in the house. I can't do them myself because we have tall ceilings and I am afraid of heights...If my husband could no longer stay in the United States, I would go back to eating those frozen dinners and I wouldn't have a yard to keep up because I couldn't afford the house by myself..." *Supra* at 5-6. While the applicant's spouse may need to make other arrangements with respect to her own continued care and the upkeep of the household were the applicant removed from the United States, counsel has not established that any new arrangements would cause extreme hardship to the applicant's spouse.

Finally, counsel states that the applicant's spouse will suffer financial hardship if the applicant were removed from the United States. As stated by counsel, "...the financial burden of maintaining two households, a likely outcome in situations where one household member must depart the United States, requires [REDACTED]"

[redacted] [the applicant's spouse] to spend nearly \$3000 above her currently monthly expenditures...Since the average skilled worker's income in Mali is only \$1560 per year, [redacted] effectively bears the brunt of maintaining both households, should she remain in the United States." *Counsel's Memorandum in Support of I-601 Waiver*, dated May 9, 2005.

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."); *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. 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).

In this case, the AAO finds that the figures provided by [redacted], Certified Public Accountant are speculative; no documentation has been provided to substantiate the figures provided in his projected statement. Moreover, no evidence has been provided by counsel that confirms that the applicant would be unable to obtain gainful employment in Mali that would permit him to assist with the expenses of the two households; information provided by counsel regarding employment and country conditions in Mali does not suffice as it is general in nature. 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)). Although the applicant's spouse may need to make alternate arrangements with respect to her household/living expenses, it has not been established that such arrangements would cause her extreme hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. 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). 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 from the United States.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, counsel documents that the applicant's spouse has 23 relatives, including parents and siblings, residing in the United States. Moreover, the applicant's spouse has been gainfully employed, by [REDACTED] since March 1988, almost twenty years. Finally, the applicant's spouse states that although she has always wanted to visit Mali, her spouse's home country, "...I didn't want it to be permanent. I don't know his native language Mandingo, or his second language French...If I went to Africa how would I communicate with people or make friends if I can't speak their language? How could I get a job if I don't know the language or the job market?...My Dad at age 62, is in Winslow, Arizona State Prison (April 2004 and has to serve 5 years.) My Dad stayed with my husband and I for about a year before he went to prison. Once he gets out I would like for him to have a home to come back too. My Dad also named me as his power of attorney. I am currently responsible for his finances..." *Supra* at 6.

Based on the language barriers the applicant's spouse would encounter were she to reside in Mali, the financial hardship and career disruption she would face leaving her long-term employment, her large family base in the United States and her responsibilities to her imprisoned father, and her medical issues and need for constant monitoring and medication, as outlined by her treating physicians in their letters in support, the AAO finds that the applicant's spouse would face extreme hardship if she were to relocate to Mali to be with the applicant.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were removed from the United States. Although the AAO concludes that the applicant's spouse would experience extreme hardship were she to relocate abroad with the applicant, it has not been established that the applicant's spouse would suffer extreme hardship were she to remain in the United States while the applicant relocates abroad. 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) 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. The waiver application is denied.