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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 23 2008

IN RE: Applicant: [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 PETITIONER:



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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Cote d'Ivoire who was 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 admission into the United States by fraud or willful misrepresentation. The applicant is the husband of a U.S. Citizen who filed a Petition for Alien Relative on his behalf.¹ The applicant 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 service center director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the Service Center Director* dated April 8, 2006.

On appeal, counsel states that Citizenship and Immigration Services ("CIS") erred in failing to consider all of the factors that constitute extreme hardship for the applicant's wife. Specifically, counsel states that CIS failed to consider documentary evidence establishing that the applicant's wife loves her husband and is financially dependent on him. *Brief in Support of Appeal* at 2-4. Counsel further states that CIS failed to consider evidence of conditions in Cote d'Ivoire and disregarded case law when it found that any hardship the applicant's wife would suffer there would be the result of her own personal choice. *Brief* at 5. Counsel states that CIS erroneously relied on *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994), and asserts that its interpretation of that decision was arbitrary. *Id.* Counsel states that a determination of extreme hardship must be based on the facts and circumstances of each case, and all hardships, abroad or in the United States, must be considered. *Brief* at 7. Counsel states that the applicant's wife will suffer financial, psychological, and emotional hardship if she remains in the United States without the applicant or if she relocates to Cote d'Ivoire. *Brief* at 7-9. Documentation submitted with the waiver application and appeal includes the following: Affidavits prepared by the applicant and his wife, a letter from a therapist who found the applicant's wife is suffering from depression and anxiety, and articles documenting conditions in Cote d'Ivoire. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [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 [Secretary] that the refusal of

¹ The AAO notes that the Form I-130, Petition for Alien Relative, filed by the applicant's wife remains adjudicated. An application for adjustment of status cannot be considered until the underlying petition has been adjudicated.

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 of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

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

U.S. court decisions have additionally 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, 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 addition, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. Moreover, the U.S. 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.

In the present case, the record reflects that the applicant is a thirty-four year-old native and citizen of Cote d'Ivoire who has resided in the United States since July 31, 1996, when he entered using a fraudulent Cote d'Ivoire passport and U.S. visa under the name [REDACTED]. The applicant married his wife, a twenty-five year-old native and citizen of the United States, on August 12, 2002. They reside in Medina, Ohio.

Counsel asserts that the applicant's wife would suffer extreme hardship if she relocated to Cote d'Ivoire due to conditions there, her inability to speak French, and difficulty assimilating to the culture. As evidence of this hardship, counsel submitted information on economic, social, and political conditions in Cote d'Ivoire and declarations from the applicant and his wife. The documentation submitted indicates that Cote d'Ivoire has experienced several years of civil strife and political instability, and as of 2005, there was little progress made towards implementing a power-sharing agreement signed in 2003. *See U.S. Department of State, Country Reports on Human Rights Practices – 2005, "Cote d'Ivoire,"* March 8, 2006. Further, as of the end of 2005, continuing political instability "increased tensions throughout the country" and the government's human rights record remained poor, with discrimination and violence against women and female genital mutilation being reported as problems. *Id.* A more recent report on human rights conditions in Cote d'Ivoire states,

The failure of subsequent peace accords resulted in the 2004 deployment of 6,000 peacekeepers under the UN Operation in Cote d'Ivoire (UNOCI), who joined the 4,000-member French Operation Licorne peacekeeping force already in the country. Approximately 8,000 UNOCI and 2,400 Licorne peacekeepers remained in the country at year's end to support the ongoing peace process. Civilian authorities in government- and NF-controlled zones generally did not maintain effective control of the security forces.

A recent report on sexual violence against women states:

The armed conflict that began in 2002 triggered the worst sexual violence in Côte d'Ivoire since the acute national political crisis began in 2000. Abuses took place throughout the country, especially in the hotly contested western regions which experienced the most fighting However, even after the end of active hostilities, from 2004 onwards, sexual violence remained a significant problem throughout both rebel- and government-held areas. . . . The various rebel factions targeted some women for abuse because of their ethnicity or perceived pro-government affiliation, often because their husband, father or another male relative worked for the state. Many others have been targeted for sexual assault for no apparent reason Pro-government forces, including members of the gendarmerie, police, army, and militias also carried out acts of sexual violence Violations by pro-government forces appeared to increase during periods of heightened political tension during the four-year political stalemate.

The low status of women and girls in law and custom contributes to the extent to which they are vulnerable to sexual violence. . . .

Human Rights Watch, "My Heart Is Cut," Sexual Violence by Rebels and Pro-Government Forces in Côte d'Ivoire, August 2007.

In her affidavit the applicant's wife states,

Background information was provided showing the persecution of foreigners and those of the Doula (sic) ethnicity. . . . In addition, I must further explain that it would be virtually impossible for me to assimilate to the culture and expectations of that culture. I would suffer extreme emotional hardship, culture shock and homesickness. Again it must be emphasized that I am a Caucasian Christian female. For example, as an uncircumcised woman, I may be considered unclean and looked down upon I also have very different ideas and expectations as to how women should be treated. Women in the Ivory Coast have very little rights. This will inevitably cause me much conflict in my daily life. *Affidavit of*

at 4.

According to her affidavit, the applicant's wife does not speak French or any other language spoken in Cote d'Ivoire, and relocation to Cote d'Ivoire would separate her from her parents and eight siblings, all of whom live in Ohio. All of these hardships, combined with the violence, poor economic conditions, and political

instability in Cote d'Ivoire and the difficulty the applicant's wife would have adapting to conditions there, would amount to extreme hardship if she were to relocate to Cote d'Ivoire with the applicant.

Counsel asserts that the applicant's wife would suffer extreme hardship if she remained in the United States, including emotional and psychological hardship as a result of being separated from the applicant and financial hardship due to the loss of his income. In her affidavit, the applicant's wife states,

If my husband is forced to leave and I stay behind in the United States. [sic] It will cause me **extreme emotional hardship**. [REDACTED] and I are very much in love. He is my best friend. We confide in each other and have become emotionally dependent on one another Staying in the United States while he is in the Ivory Coast will be as if he was killed. It would be a tremendous emotional loss. *Affidavit of [REDACTED] dated May 4, 2006, at 2-3.*

The applicant's wife further states that since the applicant's waiver application was denied, she has had difficulty sleeping and nightmares and she frequently cries. *Affidavit of [REDACTED] at 3.* She states that she has difficulty focusing on her work and studies and has lost interest in activities like working out, which she used to do almost daily. She also claims that she would be "in constant fear for [the applicant's] life because Ivory Coast is politically unstable," and this fear would cause her great emotional distress. *Id.* A letter from a counselor who evaluated the applicant's wife states that she was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood and recommends treatment based on an "assessment session." *See Letter from [REDACTED], Professional Clinical Counselor, dated May 4, 2006.* The letter further recommends that the applicant's wife's symptoms, including depressed mood, difficulty concentrating, insomnia, and feelings of hopelessness may be impairing her ability "to fulfill daily requirements such as working, eating, sleeping, and attending school." *Id.*

The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letter is based on a psychological evaluation of 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 her depression. The conclusions reached in the submitted evaluation, which appear to be based on one interview, do not reflect the insight commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The evidence on the record is insufficient to establish that the emotional effects of being separated from the applicant are more serious than the type of hardship a family member would normally suffer when faced with her spouse's deportation or exclusion. Although the depth of her concern over the applicant's immigration status is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation always results in considerable hardship to individuals and families. But 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 exists.

Counsel additionally asserts that the applicant's wife would suffer economic hardship if the applicant were removed from the United States. The applicant's wife states in her affidavit that she cannot pay their rent and other bills without the applicant's income and states that she is able to go to school because he helps her pay

for the tuition. She additionally states that she would lose the medical insurance she has through the applicant if he were removed. No documentation of the applicant's income or the family's expenses was submitted with the waiver application or appeal, and no documentation was submitted to support the assertion that the applicant's wife receives health insurance through the applicant. 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)). However, a 2004 joint income tax returns submitted with the affidavit of support filed on behalf of the applicant indicates that both the applicant and his wife were employed, and he earned about \$33,000 while she earned about \$20,000. A letter dated March 3, 2005 indicated that the applicant's wife was still employed with the same company and in the same position. There is no evidence on the record to support the assertion that the applicant's wife is completely financially dependent on the applicant or that she would be unable to support herself if he were removed from the United States. Further, even if loss of the applicant's removal would have a negative effect on his wife's financial situation, this would be a common result of deportation. The mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See INS v. Jong Ha Wang, supra.*

The emotional and financial hardship the applicant's wife would suffer if she remains in the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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)

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 and she remained in the United States. 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.