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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

H2

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FILE:



Office: PHOENIX, AZ

Date:

SEP 11 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.

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 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 Guinea 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 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 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 and reside with his U.S. citizen wife.

The district director concluded that the applicant 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 April 17, 2008.

On appeal, counsel for the applicant contends that the applicant's wife will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel*, undated. Counsel contends that the district director failed to adequately consider all of the evidence submitted or provide a complete analysis of the facts of the present matter. *Id.*

The record contains a brief from counsel; documentation relating to conditions in Guinea; statements from the applicant and the applicant's wife; a copy of the applicant's wife's resume; two general character references for the applicant; a copy of the applicant's birth record; a copy of the applicant's passport and Form I-94, Departure Record; copies of documents in connection with the applicant's wife's employment in the United States; a letter verifying the applicant's employment in New Mexico, dated July 9, 2004; copies of tax records for the applicant and his wife; a copy of the applicant's wife's birth certificate; a copy of the applicant's marriage certificate; a copy of a 2002 lease for a home bearing the applicant's and his wife's names, and copies of photographs of the applicant and his wife. The entire record was 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.

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 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 record reflects that on or about September 2, 1997, the applicant entered the United States at New York, New York using a Guinean passport that belonged to his brother. Thus, the applicant procured admission into the United States by fraud or willfully misrepresenting a material fact (his true identity.) Accordingly, the applicant 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). The applicant does not contest his inadmissibility on appeal.

A section 212(i) waiver of the bar to admission resulting from 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 hardship 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 Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau 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 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.

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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[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." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant's wife would possibly remain in the United States if the applicant departs. Separation of family will therefore be considered in the assessment of hardship factors in the present case.

The applicant stated that his wife would experience significant hardship should she relocate to Guinea to maintain family unity. *Statement from Applicant*, dated January 8, 2004. Specifically, the applicant provided that his wife has family and friends in the United States, including her mother and cousins in New Jersey. *Id.*

at 1. The applicant indicated that his wife also has friends in the United States. *Id.* at 3. Conversely, the applicant stated that his wife has no friends in Guinea. *Id.* The applicant asserted that communications such as telephone services are limited and flights between the United States and Guinea are long, thus his wife would endure limited contact with her friends and family in the United States should she reside there. *Id.*

The applicant explained that conditions are poor in Guinea, including police abuses and violent rebel groups. *Id.* at 3-4. The applicant stated that there are problems with water and food supplies in Guinea, and the quality of medical services is low. *Id.* at 4-5.

The applicant explained that French is the primary language used in Guinea, yet his wife does not speak it, which would limit her opportunities. *Id.* at 5.

The applicant stated that Guinea is a Muslim country, yet his wife is a Roman Catholic, and she would experience tension as a result. *Id.* He indicated that his wife will not wear a head covering which is widely practiced in Guinea, thus she would be discriminated against. *Id.* at 6. The applicant explained that his mother will not approve of an interfaith marriage, thus his wife will have difficulty in her relationship with his mother. *Id.*

The applicant further stated that people in Guinea mistrust those with white skin due to prior French domination of the country, thus his wife would experience discrimination due to being white. *Id.* He indicated that his wife would not be able to freely express her western views without having difficulty with the government. *Id.* at 7-8.

The applicant's wife states that she and the applicant have been married for more than six years. *Statement from Applicant's Wife*, dated November 10, 2006. She provides that she intends to relocate to Guinea if the present waiver application is denied. *Id.* at 3. She indicates that she has concern for diseases present in Guinea to which she would be exposed. *Id.* The applicant's wife explains that she has a good job in the United States as a Registered Nurse which she will lose if she departs. *Id.* at 3-4. She expresses concern that she will be cut off from friends and family should she relocate to Guinea. *Id.*

The applicant's wife indicates that she fears political instability, crime, and racial discrimination in Guinea. *Id.* at 4-6. She cites the poor sanitation and non-western toilet facilities as sources of hardship. *Id.* at 5-6.

Counsel asserts that the district director presented no evidence to rebut the evidence of extreme hardship submitted by the applicant. *Brief from Counsel* at 3. Counsel contends that the district director ignored evidence in the record. *Id.* at 3-4. Counsel describes factors of hardship that the applicant's wife would experience should she relocate to Guinea, and he asserts that she will move abroad if the present waiver application is denied. *Id.* at 7. Counsel notes that all factors of hardship must be considered in aggregate to determine if extreme hardship has been established. *Id.* at 7-8.

Upon review, the applicant has not established that his wife will experience extreme hardship should the present application be denied. The AAO is persuaded that the applicant's wife would experience extreme hardship should she relocate to Guinea. This finding is based on her long residence in the United States, her ties to the United States such as friends and family, her long employment history as a registered nurse, and

difficulties she would face in Guinea such as religious and cultural differences, loss of employment, challenges with language, decreased personal security and fear related to general instability in the country. However, the applicant has not submitted sufficient evidence or explanation to show that his wife would experience extreme hardship should she remain in the United States.

Under section 212(i) of the Act, the applicant must show that denial of the waiver application “*would result in extreme hardship to the citizen or lawfully resident spouse . . .*” Section 212(i) of the Act (emphasis added). As a U.S. citizen, the applicant’s wife is not required to depart the United States as a result of the applicant’s inadmissibility. The fact that she states a desire to relocate with the applicant does not overcome the applicant’s burden to show that his wife would suffer extreme hardship should she remain in the United States.

Should she remain in the United States, the applicant’s wife could continue her employment, she could maintain contact with her friends and family, and she would not be compelled to endure the hardships associated with residing in Guinea. The large majority of hardships discussed by the applicant, the applicant’s wife, and counsel could be avoided.

The AAO has carefully evaluated the impact of family separation on the applicant’s wife should she remain in the United States. It is noted that the applicant has not clearly explained whether he has consistently resided with his wife, such that his departure would create a significant change in the amount of contact he has with her. The applicant was interviewed on or about November 14, 2006 in connection with deferred inspection with the Atlanta, Georgia port of entry. At that time, he indicated that he resided in New York for six months out of the year where he worked as a taxi driver, and he spent the remaining six months with his wife in Arizona. He held a taxi and limousine license valid until October 24, 2009. The applicant’s wife stated that she did not own or rent any property in Arizona, yet she resided at a hospital compound where she worked consisting of two bedrooms, and the applicant stayed there with her.

The applicant has not explained whether this arrangement has changed, such that he resides with his wife on a regular basis. Nor has the applicant provided any recent documentation to clearly show his residence in any state, such to support that he in fact resides with his wife. Thus, as presently constituted, the record suggests that the applicant and his wife voluntarily live separately for significant portions of the year. This fact reflects that the applicant’s wife is accustomed to living separately from the applicant. The applicant has not shown that his absence from the United States would cause his wife to endure emotional hardship due to separation that is beyond that which would ordinarily be expected when individuals are separated as a result of inadmissibility. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board of Immigration Appeals 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.

It is further noted that the record contains no recent documentation of the applicant’s employment, income, or financial resources, thus the applicant has not established that his wife relies on his economic contribution to her household.

The applicant has not described any other potential hardships his wife would endure should she remain in the United States without him.

Considered in aggregate, the instances of hardship that would be suffered by the applicant's wife should she remain in the United States do not rise to the level of extreme hardship. Accordingly, the applicant has not shown by a preponderance of the evidence that denial of the present application "*would result* in extreme hardship to the citizen or lawfully resident spouse . . . ." Section 212(i) of the Act (emphasis added). 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(a)(6)(C) 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.