

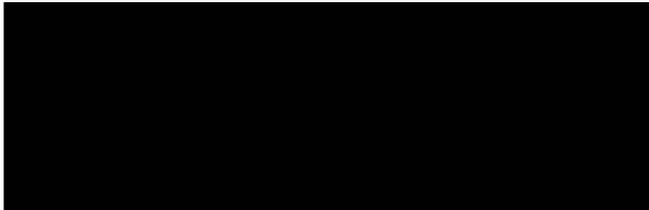
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U.S. Department of Homeland Security  
Citizenship and Immigration Services  
Administrative Appeals Office MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



H2

FILE: [REDACTED] Office: PHILADELPHIA Date: **APR 23 2009**

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 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).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Philadelphia, Pennsylvania, 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 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.

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 October 5, 2006.

On appeal, counsel for the applicant contends that the applicant's wife will suffer extreme hardship if the applicant is compelled to depart the United States, including emotional and economic consequences. *Brief from Counsel*, dated June 1, 2007.

The record contains a brief from counsel in support of the appeal; a statement from the applicant's wife; documentation relating to the applicant's employment; a copy of the applicant's son's birth certificate; a copy of the applicant's wife's birth certificate; a copy of the applicant's marriage certificate; medical documentation for the applicant's wife; medical documentation for the applicant's son; tax records; reports on conditions in Mali; copies of the applicant's birth record and passport, and; letters from acquaintances in support of the application. 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 the applicant entered the United States using a fraudulent passport on February 27, 1997, thus he procured entry by fraud and misrepresentation. 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 applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act; 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).

On appeal, counsel for the applicant contends that the applicant's wife will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel* at 2. Counsel asserts that the applicant's wife will experience economic hardship, as she cannot work due to her and her son's health condition. *Id.* Specifically, counsel states that the applicant's wife is suffering from depression, high cholesterol, and morbid obesity, as well as the fact that she has one kidney. *Id.* Counsel contends that the applicant's wife would be unable to obtain required medical care in Mali. *Id.* Counsel indicates that the applicant is providing new documentation to show his wife's medical condition. *Id.* at 3.

Counsel explains that the applicant's son has extreme problems with asthma and he requires medication and supervision. *Id.* at 2. He states that the applicant's son uses a nebulizer, which requires electricity which is not available in much of Mali. *Id.* Counsel contends that the applicant's son would not be able to obtain medical care in Mali. *Id.*

Counsel states that the applicant is supporting his family economically. *Id.* at 3. Counsel contends that reports reflect that the applicant would be unable to secure adequate employment in Mali, as it is a poor country with an imbalance of wealth. *Id.*

Counsel asserts that the applicant's wife would have difficulty adapting to life in Mali, in part because female genital mutilation is widely practiced and the applicant's wife would encounter social problems due to not undergoing the procedure. *Id.* Counsel asserts that the applicant's wife would have difficulty in Mali because she is not a Muslim, and Islam is the dominant religion in Mali. *Id.*

Counsel asserts that the applicant's children would lose the benefits of education in the United States should they relocate to Mali. *Id.*

The applicant's wife stated that she and the applicant have a good marriage. *Statement from the Applicant's Wife*, dated June 1, 2007. She indicated that her son has mild to moderate asthma, and that he requires supervision. *Id.* at 1. She explained that the applicant has a close relationship with their son, and that their son would suffer emotional consequences if they are separated. *Id.* She expressed concern regarding medical care in Mali. *Id.* She stated that she has depression, and she fears it would worsen should she be separated from the applicant. *Id.* She indicated that she would have language, religious, and ethnic problems should she relocate to Mali. *Id.* at 1-2.

The applicant submitted a letter from a physician, [REDACTED] who indicated that the applicant's wife was under care for depression, high cholesterol, and morbid obesity in 2005. *Letter from [REDACTED]*, dated May 31, 2007. [REDACTED] noted that the applicant's wife had missed two appointments, and that her depression was not under control in 2005. *Id.* at 1. The applicant provided receipts for two visits his wife had with [REDACTED] in 2005, with notations of diagnoses of depressive disorder, causalgia of lower limb, persistent insomnia, morbid obesity, dental disorder, acne, and pure hypercholesterolemia.

The applicant provided medical documentation for his son that reflects that his son has been diagnosed with asthma (mild persistent) and "hypertrophy tons and aden."

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if he is prohibited from remaining in the United States. Counsel asserts that the applicant's wife has health problems that will create hardship for her if the applicant departs the United States. The applicant provided medical documentation that reflects that his wife was diagnosed with conditions in July and August 2005. Yet, the present appeal was filed in June 2007, approximately two years after the applicant's wife's diagnoses in 2005. The applicant has not submitted a recent evaluation from a medical professional to show whether his wife has received further treatment, or whether her conditions continue. The record does not contain any indication of how the applicant's wife's health status affects her ability to work or perform ordinary tasks without assistance. The applicant's wife stated that she has one kidney, yet the record contains no medical documentation to support this assertion, or to indicate the impact such condition has on the applicant's wife. Thus, the applicant has not submitted sufficient evidence to show that his wife presently has health problems

that will result in extreme hardship should she remain in the United States and be separated from the applicant.

The applicant's wife contends that she will endure economic hardship if the applicant is compelled to depart, as he is the family's sole source of income through his employment. However, the applicant has not submitted sufficient evidence to show that his wife is unable to assume employment. As discussed above, the applicant has not shown that his wife is unable to work to meet her financial needs. Nor has the applicant submitted adequate documentation to show his wife's economic requirements, or any resources she presently has. Thus, the applicant has not shown by a preponderance of the evidence that his wife would experience significant economic hardship should he depart the United States and she remain.

The applicant's wife stated that she and the applicant enjoy a good marriage, suggesting that she would endure emotional hardship if she is separated from him. Yet, the applicant has not distinguished his wife's emotional hardship from that which is ordinarily expected when spouses are separated due to inadmissibility. 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 deported.

The applicant's wife asserted that the applicant's son will experience hardship if he is separated from the applicant. Hardship to an applicant's child is not a basis for a waiver under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's child, it is reasonable to expect that the child's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results of exclusion and deportation. The applicant has not shown that his son would experience hardship that would elevate his wife's challenges to extreme hardship.

Based on the foregoing, the applicant has not shown that his wife would experience extreme hardship should he depart the United States and she remain.

Counsel contends that the applicant's wife would face significant hardship should she relocate to Mali to maintain family unity, due to financial, health, social, and cultural issues. The AAO acknowledges that conditions in Mali are difficult, including widespread poverty, a lack of medical services, and low public health standards. The record reflects that the applicant's wife was born in Philadelphia in the

United States, and all addresses provided for her list her residence as Philadelphia. It is reasonable that the applicant's wife would experience significant hardship should she relocate to Mali with her son. While the applicant has not submitted adequate documentation to show that his wife has a present medical condition that requires health services, it is reasonable that she has concern for the lack of health care in Mali for her and her son. The AAO acknowledges that the applicant's wife would face significant economic challenges should she relocate to Mali. Considering all elements of hardship to the applicant wife in aggregate, should she relocate to Mali, she would experience extreme hardship.

However, in order to show eligibility for consideration for a waiver, the applicant must show that denial of the waiver application "would result in extreme hardship" to his wife. Section 212(i)(1) of the Act. As the applicant has not shown that his wife would experience extreme hardship should she remain in the United States, he has not shown eligibility under section 212(i)(1) of the Act. 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)(1) 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.