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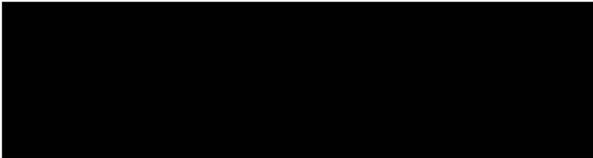
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED] Office: BALTIMORE, MD

Date: JUN 02 2009

IN RE: [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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland 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 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 married to a lawful permanent resident 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 and their U.S. citizen child.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated February 27, 2007.

On appeal, counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C) of the Act. In the alternative, counsel asserts that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding that the applicant had failed to establish extreme hardship to a qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B*.

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant's spouse; an employment letter for the applicant's spouse; an apartment lease; employment letters for the applicant; tax statements and W-2 Forms for the applicant; statements from the applicant; a statement from a friend; and earnings statements for the applicant. The entire record was reviewed and considered in rendering this decision.

On appeal, counsel asserts that USCIS failed to give the applicant an opportunity to rectify any lack of documentation prior to making its determination in this matter and claims that, at the time of the Form I-485 interview, the applicant's spouse was not given an opportunity to provide evidence. *Attorney's brief*. The AAO notes these assertions, but finds any concerns on the part of counsel to have been met by the appeal process, which has allowed the applicant to supplement the record with new evidence.

Counsel also requests the opportunity to make an oral argument regarding the issues in this case. *Attorney's brief*. Regulation, however, requires the requesting party to explain in writing why an oral argument is necessary. Further, USCIS, which has the sole authority to grant or deny a request for oral argument, will grant such argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, counsel has identified no such factors or issues, nor offered any specific reasons why oral argument should be held. The AAO finds the written record of proceedings to fully represent the facts and issues in this case and, consequently, denies the request for oral argument.

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 in 1995 the applicant procured admission into the United States by presenting a fraudulent passport. *Form I-601, Application for Waiver of Ground of Excludability; Form I-648, Memorandum Record of Interview made in Examination Section*, dated February 3, 2005. The passport was arranged by the agent who had facilitated his travel to and entry into the United States. *Form I-601*. The passport contained the applicant's name and photograph. *Memorandum Record of Interview*. Counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C) of the Act because his misrepresentation was not willful. *Attorney's statement*, dated April 6, 2005.

Prior to addressing whether the applicant qualifies for a waiver, the AAO finds it necessary to address the issue of inadmissibility. The applicant admitted to submitting a fraudulent passport to gain admission to the United States and that this passport contained his name and photograph. *Memorandum Record of Interview*. The fact that the passport was arranged by an agent does not insulate the applicant from liability, as it was the applicant who used the passport to gain admission into the United States. As such, the AAO finds the applicant to be inadmissible under section 212(a)(6)(C) of the Act.

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. The plain language of the statute indicates that hardship that the applicant or his child would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. If 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 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 a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in the Ivory Coast or 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 AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to the Ivory Coast, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in Rwanda. *Form G-325A, Biographic Information sheet, for the applicant; Statement from the applicant's spouse*, dated March 28, 2007. As a young woman, she suffered in the Rwandan genocide and fled to a refugee camp in Zaire. *Statement from the applicant's spouse*, dated March 28, 2007. She did not have any relatives with her in the refugee camp, and she has no family who, to her knowledge, survived. *Id.* Counsel reiterates that the applicant's spouse is without any living family members, other than her daughter and the applicant. *Attorney's brief*. Counsel states that the applicant's spouse is unlikely to be able to join the applicant in Africa as she fears the same persecution that destroyed her family. *Id.* While the AAO acknowledges counsel's statement, it notes that the statement submitted into the record from the applicant's spouse does not mention such fear, nor is there any documentation from a licensed healthcare professional stating how the applicant's spouse would be affected emotionally by relocating to the Ivory Coast. Neither does the record document any conditions in the Ivory Coast, for example published country condition reports, that would support the concerns that counsel indicates have been expressed by the applicant's spouse regarding relocation. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The applicant's spouse is a self-employed independent contractor who works as a nursing assistant. *Employment letter for the applicant's spouse*, dated April 13, 2007. The applicant's spouse states that she does not know whether she could accompany the applicant to the Ivory Coast, as her ability to earn will be destroyed after such a long period of developing her life and employment. *Statement from the applicant's spouse*, dated March 28, 2007. While the AAO acknowledges this statement, it again notes that the record does not include published country conditions reports documenting the economy or employment opportunities in the Ivory Coast. The record also makes no mention of the language abilities of the applicant's spouse and whether this may affect her ability to obtain employment in the Ivory Coast. The applicant's spouse states that the Ivory Coast is a war zone and that, as a result, she could not take her daughter there to be subjected to war, disease and minimal education. *Statement from the applicant's spouse*,

dated April 25, 2006. Counsel asserts that USCIS failed to consider the extreme hardship that the applicant's child would suffer upon relocation. While the AAO acknowledges counsel's statement, it notes that the applicant's daughter is not a qualifying relative for purposes of this proceeding and there is nothing in the record that documents how any hardships to the applicant's child would affect the applicant's spouse, the only qualifying relative. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the Ivory Coast.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The record does not address how long the applicant's spouse has resided in the United States, but the AAO notes that the applicant's spouse has been a lawful permanent resident in the United States since June 29, 2004. *Permanent Resident Card*. As previously noted, the applicant's spouse states that she does not have any living family members other than her child and the applicant. *Statement from the applicant's spouse*, dated March 28, 2007; *Attorney's brief*. The applicant's child was born on October 22, 2005. *Birth certificate for the applicant's child*. At the time of the appeal, the applicant's child was 18 months old. *Statement from the applicant's spouse*, dated March 28, 2007. The applicant's spouse states that being a single mother is a prospect that will be crushing to her child and herself. *Id.* The applicant's spouse states that her work often involves hours outside of normal working hours, as she takes care of clients in the evenings as well as the early mornings. *Id.* The applicant spends a lot of time taking care of their child, as she cannot afford a full-time caretaker. *Id.* The applicant's spouse is a self-employed independent contractor who works as a nursing assistant. *Employment letter for the applicant's spouse*, dated April 13, 2007. According to her employer, the applicant's spouse works 55 hours a week at the rate of \$15.00 an hour. *Id.* The applicant's spouse notes that her own strength will be weakened by the applicant's loss while the demands of her child will increase, and she asserts that her whole life will be placed into turmoil. *Id.* When looking at the aforementioned factors, particularly the applicant's spouse's own history, the absence of other family in the United States, her employment situation, as documented by her employer, and the difficulties her employment presents in relation to her child care responsibilities, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

However, as the record has also failed to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility to the United States if she relocates to the Ivory Coast, the applicant is not eligible for a waiver of her inadmissibility under section 212(i) 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(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.