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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
and Immigration
Services

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FILE: [REDACTED] Office: NEWARK, NEW JERSEY Date: MAR 31 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 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.

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, 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, Newark, New Jersey, 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 previously sought to procure admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Fiancé(e) filed on his behalf by his U.S. Citizen spouse, whom he married within ninety days of entry into the United States. 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 spouse and children.

The 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. *See Decision of the District Director* dated February 14, 2006.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) erred in determining that the applicant had not established that his wife would suffer extreme emotional and psychological hardship if the applicant were removed from the United States. Counsel asserts that a second psychological evaluation for the applicant's wife indicates that she is suffering from clinical depression and anxiety and that her condition has worsened since her last evaluation. In support of the waiver application and appeal, counsel submitted two psychological evaluations for the applicant's wife, birth certificates and marriage certificates for the applicant and other relatives, an affidavit from the applicant's wife, letters from the applicant's employer and his wife's employer, and income tax returns for the applicant and his wife. The entire record was reviewed and considered in rendering 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 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.

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. *Id.* at 566. The BIA has held:

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 has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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). 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).

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. In *Hassan v. INS*, *supra*, the court further held 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. 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.

The record reflects that the applicant is a thirty-three year-old native and citizen of Cote d'Ivoire who attempted to enter the United States on May 5, 2001 under the visa waiver program with a counterfeit French passport. He requested asylum and was placed in asylum-only proceedings before an immigration judge. His asylum application was denied and he was returned to Italy, where his original flight to the United States had originated. The applicant's wife filed a Petition for Alien Fiancé(e) for the applicant and he was admitted to the United States with a K1 visa on March 27, 2002. The applicant married his wife on June 12, 2002 in compliance with the terms of his K1 visa and filed an application for adjustment of status on July 17, 2002. The record further reflects that the applicant's wife is a forty-three year-old native of Guyana and citizen of the United States. She and the applicant live in Irvington, New Jersey with their two children.

The AAO notes that the district director also found the applicant to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for one year or more before he departed the United States in April 2004 and returned with advance parole. The applicant was admitted with a K1 visa and complied with the terms of his status by marrying his fiancée within 90 days, and he applied for adjustment of status on July 17, 2002. The applicant was therefore not unlawfully present in the United States before his 2004 departure and is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act. He is, however inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to gain admission to the United States through the use of a fraudulent passport.

Counsel asserts that the applicant's wife would experience extreme emotional and psychological hardship if the applicant were removed from the United States and submitted two psychological evaluations by [REDACTED], in support of this assertion. The second evaluation, which was conducted on March 7, 2006, states that the psychological and physical condition of the applicant's wife had worsened during the year following the first evaluation in February 2005, and she had "become appreciably more feeble and weakened" and was "in severe psychological distress, placing her at risk for suicide and psychiatric destabilization." See *Psychological Re-evaluation of* [REDACTED], dated March 7, 2006, at 2. The evaluation further states that the effects of the applicant's removal on his wife would be considerably worse than on other individuals similarly situated "given her past history of adversity and current psychological disorders." *Id.* at 4. [REDACTED] further states, [REDACTED] has demonstrated in the past year that her psychiatric conditions are within the clinical range which render her more at risk for psychiatric destabilization and suicide, should her husband be deported," and he recommends continued psychological monitoring and psychopharmacologic treatment. *Id.* at 4-5.

Upon a complete review of the evidence on the record, the AAO finds that the applicant has established that his wife would experience extreme hardship if he is removed and she remains in the United States. The record contains documentation that indicates that the applicant's wife is experiencing clinical anxiety and depression over the prospect of being separated from the applicant,

she has had suicidal ideations, and her family is on close watch given these ideations. *See Psychological Re-evaluation of [REDACTED]* dated March 7, 2006, at 5. While the record does not contain specific evidence concerning any treatment the applicant's wife may be receiving, there is sufficient documentation to show that her emotional health has been deemed tenuous by a mental health professional. It therefore appears that if the applicant's wife remained in the United States and were separated from the applicant, she would suffer emotional hardship beyond that which is normally experienced by family members as a result of removal or deportation.

The psychological evaluation for the applicant's wife states that the applicant's wife has extensive family ties in the United States including her two children, ten siblings, and 19 nieces and nephews. *See Psychological Re-evaluation of [REDACTED]* dated March 7, 2006, at 2. The evaluation further states that the applicant's wife's mother has Alzheimer's disease and recently suffered a heart attack and needs the ongoing care and support of a family member. While separation from close family members is a primary concern is assessing extreme hardship, and the effects of a significant medical condition of a close relative can result in emotion hardship to the qualifying relative, the AAO notes that no evidence was submitted concerning the medical condition of the applicant's mother or documenting the presence of family members in the United States. 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)). No further assertions were made and no evidence was submitted concerning hardship that to the applicant's wife if she were to relocate to Cote d'Ivoire with the applicant. The evidence on the record is therefore insufficient to establish that the applicant's wife would suffer extreme hardship if she were to relocate to Cote d'Ivoire with the applicant.

Based on the evidence on the record, any emotional or financial hardship the applicant's wife would experience if he is removed from the United States and she relocates with him to Cote d'Ivoire 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).

In this case, the record does not contain sufficient evidence to show that any hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under section 212(i) of the Act.

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.