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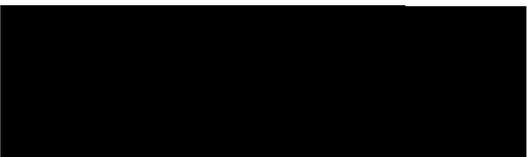
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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FILE: [REDACTED] Office: PHILADELPHIA, PA Date: **MAY 01 2009**

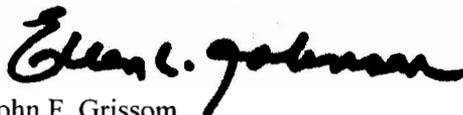
IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the  
Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:  
[REDACTED]

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.

  
John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Senegal who was found to be inadmissible to the United States pursuant to 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 entered the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband in the United States.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated September 13, 2006.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED] indicating they were married on April 10, 2004; an affidavit from [REDACTED]; financial and tax documents; letters from the applicant's and [REDACTED] employers; a copy of [REDACTED]'s discharge instructions from the emergency department; a copy of a police report; two letters of support; a letter and psychological evaluation from [REDACTED] psychologist; and a letter from a psychotherapist addressing [REDACTED] daughter's mental illness. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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) provides:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien.

The record shows, and counsel does not contest, that the applicant entered the United States in December 2001 using a fraudulent passport. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States by fraud or willful misrepresentation.

A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. *See* section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). 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-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include: the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of 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 Court of Appeals for the Ninth Circuit has held that “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 (9<sup>th</sup> Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9<sup>th</sup> Cir. 1987) (“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); *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9<sup>th</sup> Cir. 1981) (economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme) (citations omitted).

In this case, the record reflects that [REDACTED] has a twenty-year old son and nineteen-year old daughter from a previous relationship. [REDACTED] states that she lives in a public housing project

in Philadelphia, that her children have “wild tendencies,” and that they have attacked her in the past. She further states that her husband has tried to help her children, defends her when they have attacked her, and has attended counseling with her daughter. She states that he has “tried to use the law enforcement in the juvenile system to help [her] children” so that they do not spend the rest of their lives in prison. She states that her son no longer lives with them because he could not abide by the applicant’s simple rules. [REDACTED] states her daughter suffers from both emotional and financial problems, relies on [REDACTED] to take care of her, and “would not be able to survive” without her. [REDACTED] states that her husband has helped her physically, emotionally, as well as financially. In addition, [REDACTED] states that she has problems with her physical health, but due to financial reasons, the only health care she receives is in the hospital’s emergency room. She states that the emergency room doctor believes she “may be suffering from a mini stroke,” and that she has had significant problems with her memory. *Affidavit by [REDACTED]*, dated October 11, 2006.

The record also contains a letter from a licensed psychologist. The psychologist noted that Ms. [REDACTED] has short-term as well as long-term memory problems and states that [REDACTED] “is currently experiencing psychological difficulties and warrants intensive psychological treatment.” The psychologist diagnosed [REDACTED] with severe major depressive disorder and described her mental status as being on a “downward spiral.” The psychologist stated that without the assistance of medication and psychotherapy, [REDACTED] may need psychiatric hospitalization. The psychologist concluded that if [REDACTED] husband is deported, “the prognosis is poor to extremely poor[,] . . . requiring psychiatric hospitalization.” *Letter and Psychological Report from [REDACTED]*, dated December 1, 2005.

Another letter in the record from a psychotherapist states that [REDACTED] daughter is mentally ill and describes her as a “management problem.” The psychotherapist stated that the applicant teaches how to handle her daughter and that [REDACTED] depends on him to help manage her daughter’s behavior. *Letter from [REDACTED]*, dated July 22, 2004.

A police report in the record indicates that on June 26, 2006, the applicant called the police in response to events involving [REDACTED] daughter. According to the police report, [REDACTED] daughter asked her mother for money and when [REDACTED] refused, her daughter had a “temper tantrum,” eventually “pull[ing] a knife” on the applicant. After police left, the applicant’s wallet was stolen. *Philadelphia Police Department Investigation Report*, dated June 26, 2006. In addition, the record contains a hearing notice for a protective order the applicant filed against [REDACTED]’s son. *In the Court of Common Pleas of Philadelphia County, Notice of Hearing and Order*, dated November 15, 2004.

The record also contains discharge instructions from the Albert Einstein Healthcare Network Emergency Department, which instructed [REDACTED] to “[f]ollow up with [her] regular physician today” and to return to the emergency room if she experienced an increase in “dizziness/lightheadedness, weakness, numbness, or tingling.” *General Medical Discharge Instructions*, dated July 11, 2006.

Upon a complete review of the record evidence, the AAO finds that the applicant has established that his wife will experience extreme hardship if his waiver application is denied.

Considering all of the factors in the aggregate, the AAO finds that the physical, personal, emotional, and economic hardship that would result from the denial of a waiver of inadmissibility constitutes extreme hardship. It is evident from the record that, considering the difficulties [REDACTED] has had with her children, she substantially relies on the applicant for her physical safety and emotional health. The record shows that the applicant has protected [REDACTED] from her own children, calling law enforcement and filing protective orders when necessary. In addition, although the letter from the psychotherapist in the record could have contained more details regarding [REDACTED] daughter's mental illness, it is clear that [REDACTED] relies on the applicant's help to manage her daughter and that the applicant has attended counseling sessions with her daughter. *Letter from [REDACTED]; supra; Affidavit by [REDACTED] supra.* Furthermore, [REDACTED] has medical as well as mental health problems. [REDACTED] claim that she has problems with her physical health is substantiated by the emergency room's discharge instructions. Although more detailed information regarding her health problems would have been helpful, [REDACTED] reasonably explained that due to her financial situation, she does not have a regular doctor and is only able to receive medical attention in the emergency room. In addition, the record shows that [REDACTED] has memory problems and other serious mental health problems. As the psychological report noted, Ms. [REDACTED] is "very close" with her husband, appears to be on a downward spiral, and requires medication and psychotherapy. *Letter and Psychological Report from [REDACTED]; supra.* As the psychologist concluded, if the applicant is removed from the United States, [REDACTED] will require psychiatric hospitalization. *Id.* The fact that [REDACTED] is not currently taking medication or receiving psychotherapy does not diminish her claim or alter the psychologist's conclusions, particularly considering that [REDACTED] does not have a regular doctor.

Moreover, [REDACTED] would suffer extreme financial hardship if the applicant's waiver application were denied. The record shows that despite being attacked by her daughter, she continues to live with [REDACTED] and the applicant, who financially support her. The record indicates that in 2001, [REDACTED] earned \$10,418. In 2003, she earned \$12,904. In 2005, after marrying the applicant, the couple earned a total of \$26,450, of which [REDACTED] earned \$18,613. The AAO recognizes that [REDACTED] lives in public housing, does not have the financial means to obtain medical care outside of the emergency room, and supports her mentally ill daughter. Under these circumstances, even though [REDACTED] earned the majority of the couple's income, the AAO finds that she would suffer extreme financial hardship if the applicant's waiver application were denied.

The AAO also finds that it would constitute extreme hardship for [REDACTED] to go to Senegal to avoid the hardship of separation from her husband. [REDACTED] who was born in the United States, would be separated from her children and be unable to care for her mentally ill daughter. Based on these factors, the hardship [REDACTED] would experience if her husband were refused admission is extreme, going well beyond those hardships ordinarily associated with deportation. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship

if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the applicant bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case includes the applicant's entry into the United States using a fraudulent passport and periods of unauthorized presence and employment. The favorable and mitigating factors in the present case include: the applicant has family ties to the United States, including his U.S. citizen wife and her children; the extreme hardship to the applicant's wife if he were refused admission; the letters of support in the record describing the applicant's respect and love for his wife; and the applicant's lack of any criminal convictions.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.