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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE:

Office: PHILADELPHIA

Date: **MAY 27 2009**

IN RE:

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:

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 "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting 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 Mali 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 using a fraudulent passport. 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 his wife and children in the United States.

The acting 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 Acting District Director*, dated June 6, 2006.

On appeal, counsel contends that when the record is considered in its totality, the applicant has established that his wife will suffer extreme hardship if his waiver application were denied.

The record contains, *inter alia*: a copy of the marriage license of the applicant and his wife, [REDACTED], indicating they were married on October 4, 2002; a letter from [REDACTED] physician documenting her pregnancy; a letter from the mother of the applicant's child; letters from the applicant's and [REDACTED] employers; a copy of the fraudulent visa the applicant used; a Psychological Report for [REDACTED] a copy of the U.S. Department of State's 2005 Country Reports on Human Rights Practices for Mali; copies of bills and other financial and tax documents; a copy of the death certificate of the applicant's and [REDACTED]'s newborn child; photos of the applicant and his family; and a copy of an approved Petition for Alien Relative (Form I-130). 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 the applicant admits, that he entered the United States using a fraudulent passport in January 1997. 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. 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 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th 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 (9th 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, [REDACTED] states the applicant "is [her] sole emotional support." [REDACTED] states she was abandoned by her mother who is a paranoid schizoaffective and that she has never had any contact with her father. She claims her life would be ruined if the applicant departed the United States. She states she could not raise the couple's daughter as a single parent with no support network. Furthermore, [REDACTED] states she would be unable to support herself and the couple's daughter if her husband left the United States. [REDACTED] describes monthly expenses of \$1,762, which exceed her average monthly income by approximately \$650 per month. She states the applicant contributes significantly to their household expenses and attached copies of pay stubs from the applicant's two jobs to document his earnings. In addition, [REDACTED] contends she could not go to Mali as Mali is a very poor country, she does not speak French or any African language, and she is Christian whereas Mali is a Muslim country. She states she "would be unable to cope with life in that country." [REDACTED] states the applicant "is the only good thing that has ever happened to [her], and [she] could not bear to be without him." *Statement in Support of I-601 Waiver for [REDACTED]* by [REDACTED] undated; *Statement of [REDACTED] with Respect to Extreme Financial Hardship*, undated.

A Psychological Report for [REDACTED] in the record indicates that [REDACTED] does not know her father and that her mother was diagnosed with paranoid schizophrenia before [REDACTED] was born. According to the Psychological Report, [REDACTED] was placed in a foster home in Washington, D.C., when she was four years old after she and her sisters were found living on the streets. The report indicates [REDACTED] stated her mother took them on a bus to Washington for no reason. She stated that they lived in shelters, but would get evicted when her mother would "go off." [REDACTED]'s mother often wandered off, leaving [REDACTED] and her sisters alone and begging for food from strangers. On one occasion, [REDACTED] was using the restroom at a bus station when her mother punched her in the nose, causing the police to arrest and incarcerate her mother. [REDACTED] stated she was taken to the police station where she was made to strip off her clothing so investigators could determine whether she had been physically abused. The report further states that [REDACTED] and her sisters eventually moved in with an aunt and uncle in Philadelphia. [REDACTED] stated her mother would hide in cars or behind buildings and try to take her and her sisters away from the aunt and uncle's house. [REDACTED] was depressed throughout elementary school, repeated the first grade, and could not keep her mind on her work given her family problems. She developed suicidal thinking in early adolescence and thought she would be better off dead. [REDACTED] told the psychologist that she still has suicidal thinking which she keeps to herself and asked the psychologist whether she would ever recover from her childhood or whether she would develop schizophrenia. The report states that [REDACTED] stated she could not live without her husband and that she has no idea what she would do on her own. In addition, the Psychological Report indicated that [REDACTED]'s first relationship with a man was a "disaster" because the man drank and beat her when he was drunk. [REDACTED] stated she dated him for three years because it was better to be with someone who beat you than to be alone. The Psychological Report indicates [REDACTED] had four miscarriages before giving birth to her son, who was born prematurely and died when he was seven months old. The psychologist diagnosed [REDACTED] with severe depression and "active suicidal behavior . . . in the clinically significant range." The psychologist stated [REDACTED] day-to-day judgment is extremely variable and inconsistent, that she has extremely poor self-image, poor coping abilities,

and “a brittle psychological structure.” Psychological testing indicates [REDACTED] has suicidal thoughts and that there is a “reasonable clinical concern regarding suicidal behavior, particularly when [REDACTED] is stressed.” The psychologist concluded that [REDACTED] has been mentally ill since she was a child. [REDACTED] is too psychologically fragile to live in this country without her husband. . . . [H]er history precluded her ever experiencing a normal psychological development [and she] has few inner psychological resources.” In the psychologist’s opinion, [REDACTED] “already meager psychological resources would become overwhelmed” if her husband left the country or if she moved to Mali to be with him. Her depression and risk for suicidal behavior would increase and, “[w]hile it is possible that [REDACTED] depression could be treated with medication and mental health counseling, the insecurities in her, her potential for regression, and her brittle psychological organization, are so deeply embedded in her personality, that no amount of medication or counseling, would modify either in any appreciable way.” *Letter from* [REDACTED] dated August 22, 2005.

The record also shows that the applicant has a son from a previous relationship. According to the mother of the applicant’s son, the applicant is a wonderful father and provides them with food, money, and transportation. *Letter from* [REDACTED], undated.

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.

It is evident from the record that the personal, emotional, and financial hardship that would result from the denial of a waiver of inadmissibility constitutes extreme hardship. The record shows that [REDACTED] has significant mental health issues including a history of severe depression and suicidal tendencies. The record shows that she experienced a very difficult childhood living on the streets and in a foster home, begging for food, as a result of her mother’s paranoid schizophrenia. The record also shows that [REDACTED] has had four miscarriages and that the couple lost their first son when he was seven months old. It is evident that [REDACTED] is extremely emotionally dependent on the applicant, her sole source of emotional support. [REDACTED]’s claim that she could not bear to be without her husband and that if the waiver were not granted, her and her daughter’s life would be ruined is substantiated by the Psychological Report in the record, which concludes that [REDACTED] is too psychologically fragile to live in this country without her husband. *Letter from* [REDACTED] *supra*. Considering [REDACTED] serious mental health issues which, as the psychologist concluded, no amount of medication or counseling would alleviate in any appreciable way, the effect of separation from the applicant on [REDACTED] go above and beyond the experience that is typical to individuals separated as a result of deportation and rises to the level of extreme hardship. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 303 (BIA 1996) (finding extreme hardship to the applicant’s wife based on her history of depression and a suicide attempt); *cf. Hernandez-Perez v. Mukasey*, 271 Fed.Appx. 592, 593-94 (9th Cir. 2008) (unpublished) (stating that a “psychiatrist’s opinion that Hernandez’s mother will ‘likely . . . attempt suicide’ [if her son is deported] is . . . highly probative of extreme hardship”) (emphasis in original).

It would also constitute extreme hardship for ██████████ to go to Mali to avoid the hardship of separation from her husband. As the Psychological Report found, given ██████████ “already meager psychological resources,” she would be unable to adjust to living in Mali, particularly considering she does not speak French or any other African language. *Letter from* ██████████ *supra*. 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 ██████████ 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 alien 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 factor in the present case includes the applicant’s entry into the United States using a fraudulent passport. The favorable and mitigating factors in the present case include: the applicant has significant family ties to the United States, including his U.S. citizen wife and two U.S. citizen children; the extreme hardship to the applicant’s wife if he were refused admission, particularly in light of his wife’s mental health conditions; and the applicant’s lack of any criminal convictions.

The AAO finds that, although the applicant’s immigration violation is 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.