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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:



Office: SEATTLE, WASHINGTON

Date:

SEP 03 2009

IN RE:



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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Seattle, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of the Republic of the Congo 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 with his U.S. citizen wife.

The field office 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 Field Office Director*, dated July 22, 2008.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erred in determining that the applicant had not established that his wife would suffer extreme hardship if he is denied admission to the United States. *See Statement of Reasons for Appeal*. Counsel states that USCIS overlooked certain factors of hardship and failed to consider all relevant factors and failed to give proper consideration to a psychological evaluation of the applicant's wife. *Id.* Counsel further claims that USCIS improperly discounted the hardship the applicant's wife would suffer due to their separation by assuming that the applicant's employment for weeks at a time on a fishing vessel was equivalent to the separation that would result from his removal from the United States. *Id.* In support of the waiver application and appeal the applicant submitted declarations from the applicant and his wife, letters from friends and co-workers of the applicant and his wife, letters from the applicant's wife's mother and aunt, a letter from the applicant's mother-in-law's doctor, two psychological evaluations of the applicant's wife, articles on the psychological effects of serving as a caregiver for a cancer patient, and information on conditions in Mali, where the applicant resided since he was a child. 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.

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 alien himself experiences upon removal is irrelevant to section 212(i) waiver proceedings; 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).

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 further stated:

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 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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant's wife would possibly remain in the United States if the applicant departs. Separation of family will therefore be carefully considered in the assessment of hardship factors in the present case.

The record reflects that the applicant is a thirty-five year-old native and citizen of the Republic of Congo and former resident of Mali who has resided in the United States since December 18, 1999, when was admitted to the United States after presenting a fraudulent Malian passport and U.S. visa under the name [REDACTED]. 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), for having procured admission to the United States through fraud or

misrepresentation of a material fact. The record further reflects that the applicant's wife, whom he married on April 4, 2007, is a forty-one year-old native and citizen of the United States. They currently reside in Edmonds, Washington.

The applicant's wife states that she will experience extreme emotional and financial hardship if the applicant is compelled to depart the United States and she remains in the United States. She states that she has suffered from serious depression throughout her life and in particular since her mother was diagnosed with lung cancer shortly before she met the applicant. *Declaration of* [REDACTED] [REDACTED] dated September 15, 2008. She states that the applicant helped bring her depression under control and gives her strength as she continues to serve as her mother's caregiver. *Id.* She states that her mother is not "cancer-free" as stated in the decision denying the waiver application, but that her chemotherapy and radiation were successful and the cancer is now being treated through medication. *See letter from* [REDACTED] dated September 12, 2008. She further states that her mother suffers from various illnesses that require hospitalization every winter. She states that while she serves as her mother's support, she too is in need of support, and the applicant has been there for her "in every way imaginable," both during her mother's illness and after the sudden death of her brother in February 2007. *Declaration of* [REDACTED] dated September 15, 2008. A letter from the applicant's mother-in-law states that the applicant has been a great support to his wife while she assisted her during all her treatments and doctor appointments as well as after the death of her brother and her mother's recent hospitalizations. *Letter from* [REDACTED] dated September 9, 2008. The letter further states that while the applicant's wife was not working she cared for her mother during the day, but since she returned to work the applicant drops by a few days a week to check on her even though he has not been asked to do this. *Id.*

A letter from a physician treating the applicant's mother-in-law states that she is being treated for pulmonary embolism, stage IIIB non-small-cell lung cancer, and paroxysmal atrial fibrillation. The letter further states: "She has moderate difficulty with yearly hospitalizations and requires a caregiver, who happens to be her daughter [REDACTED]" *Letter from* [REDACTED], dated September 15, 2008. The record also contains two psychological evaluations of the applicant's wife, one submitted with the waiver application and the other with the appeal, and articles concerning the quality of life of caregivers of cancer patients. The AAO notes that there is no evidence on the record to establish that the applicant's wife was diagnosed with depression before meeting the applicant or that she ever received treatment for this condition. The psychological evaluations on the record do indicate, however, that she has experienced symptoms of depression and anxiety due to stress over the applicant's immigration status and her mother's illness, and it appears her condition worsened after the waiver application was denied. An evaluation conducted by [REDACTED] states that the applicant's wife arrived for the evaluation "in obvious distress" and repeatedly said she felt she was being asked to choose between her mother and her husband. *Psychological Evaluation of* [REDACTED] dated September 8, 2008. The evaluation further states that she is very worried about her mother, "has a tremendous load of grief and stress," and fears she cannot meet her financial obligations without the applicant's income. *Id.* The evaluation concludes that the applicant's wife is suffering from severe depression and anxiety as well as a panic disorder with agoraphobia. [REDACTED] further states that the applicant's wife cannot leave her mother and daughter to go to the applicant's country and that while she has found the weeks of separation from the applicant while he worked on a fishing boat difficult, "[y]ears of separation would be emotionally and financially devastating." *Id.*

Upon a complete review of the evidence on the record, the AAO finds that the applicant has established that his wife will experience extreme hardship if he is denied admission and she remains in the United States. The record indicates that the applicant's wife provides care and support for her mother, who suffers from cancer and other serious ailments. The applicant's wife is experiencing depression and anxiety due to her mother's condition and fears that the applicant will be removed from the United States, and the record further indicates that the applicant is a source of emotional and financial support and also provides some assistance in the care of her mother while his wife is working. It thus appears that the applicant's wife's depression and anxiety would likely worsen if she is left to care for her mother without the applicant's support. This emotional hardship, combined with the hardship caused by being separated from the applicant, would cumulatively amount to extreme hardship to the applicant's wife if he were removed from the United States and she remained. As noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998).

Counsel asserts that the applicant's wife would suffer extreme hardship if she relocated to Mali with the applicant due to separation from her family members in the United States and due to conditions there. *Brief in Support of Appeal* at 6-8. The applicant states he does not want his wife to relocate to Mali because it is unstable there and she would not be safe, and "[h]aving never been to Africa, and not understanding the culture, she would not be able to find a job" As evidence of potential hardship if she relocates to Mali, counsel submitted information on economic and political conditions there. The documentation submitted indicates that Mali is among the poorest countries in the world, with a life expectancy of 49, substandard medical care, and a very high degree of risk of exposure to major infectious diseases. French is the official language and 80% of the population speaks Bambara. *See CIA World Factbook: Mali*. Further, according to her declaration, the applicant's wife shares custody of her minor daughter with her ex-husband and would have to leave her and her mother if she relocated to Mali. *Declaration of [REDACTED]* dated September 15, 2008.

The AAO notes that although the applicant states he has resided in Mali since he was a small child, there is no evidence on the record that he is a citizen or has been accorded any other status there. The record indicates that he traveled to Mali in 2004 with a Congolese passport and Malian visa and reentered the United States with an Advance Parole document. The applicant states that he resided in Mali for most of his life and his son still resides there in the care of the applicant's cousin, and the applicant further states that he would return there if he is denied admission to the United States. The applicant has not established that he has legal status in Mali and would be able to reside there rather than his country of citizenship if denied admission to the United States. The AAO notes, however, that the difficulties that the applicant's wife would have adapting to economic and social conditions in Mali and having to sever her family ties in the United States, would also occur if she and the applicant were to relocate to the Congo. According to the U.S. Department of State, Bureau of African Affairs:

Congo's sparse population is concentrated in the southwestern portion of the country, leaving the vast areas of tropical jungle in the north virtually uninhabited. . . . In southern rural areas, industrial and commercial activity suffered as a consequence of the civil wars in the late 1990s. Except in Kouilou province and Pointe Noire,

commercial activity other than subsistence activity came nearly to a halt. A slow recovery began in 2000 and continued in 2008. . . . Before the 1997 war, about 9,000 Europeans and other non-Africans lived in Congo, most of whom were French. Only a fraction of this number remains. The number of American citizens residing in Congo typically hovers around 300. *See U.S. Department of State, Background Note: Republic of the Congo*, August 2009.

The AAO finds that relocating to either Mali or the Republic of Congo would pose numerous hardships for the applicant's wife, including separation from her family members, who are all in the United States; having to adjust to a new culture and language after spending her entire life in the United States; and the financial burden of moving and relinquishing her current employment. Further, as noted above, the applicant's wife devotes considerable time to the care of her ailing mother, and having to leave her would likely result in significant emotional hardship. When considered in the aggregate, the emotional and financial hardships that would result from relocation to Mali or the Congo and being separated from her family members and severing her other ties to the United States would amount to extreme hardship for the applicant's wife.

Based on the forgoing, the AAO finds that the applicant's wife would face extreme hardship if the applicant's waiver application is denied. The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for relief does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957). The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. *See Matter of Cervantes-Gonzalez, supra*, at 12.

In evaluating whether relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives). *Matter of Mendez-Morales, supra*. The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The negative factors in this case are the applicant's use of a fraudulent passport and visa to enter the United States and his unlawful presence in the United States. The positive factors in this case include hardship to the applicant's wife if he were compelled to depart the United States; the applicant's record of working and paying his taxes in the United States; and the applicant's good moral character as attested to in letters from relatives of his wife, friends, and co-workers.

Although the applicant's immigration violations cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden that he merits approval of his application.

ORDER: The appeal is sustained.