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

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

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DATE: FEB 2 9 2012 Office: ACCRA, GHANA FILE: [redacted]

IN RE: Applicant [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and a citizen of Cameroon who was convicted of passport fraud for having used a fraudulent passport to enter the United States. The applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude, and under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), for having entered the United States using a fraudulent passport. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), and section 212(i) of the Act, 8 U.S.C. § 1182(i).

The Field Office Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on August 21, 2009.

On appeal, counsel for the applicant asserts that United States Citizenship and Immigration Services (USCIS) failed to accord proper weight to the applicant's spouse's mental health condition, societal pressure to relocate to Cameroon and failed to consider the hardship impacts in the aggregate. *Form I-290B*, received September 17, 2009.

The record contains, but is not limited to, the following evidence: a brief from counsel for the applicant; statements from friends and family members of the applicant and his spouse; country conditions materials on Cameroon, including a Travel Warning issued by the U.S. Department of State, Bureau of Consular Affairs; a statement from the applicant's spouse; copies of numerous news articles discussing gender inequality, police corruption, availability of medical care, human rights violations, crime, political violence and poverty; statements from [redacted] concerning the mental health status of the applicant's spouse, dated May 27, 2009, and September 26, 2009; a statement from [redacted] providing a psychological evaluation of the applicant's spouse, dated May 14, 2009; and documents related to the applicant's conviction for passport fraud.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (i) 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 chapter is inadmissible.

The record indicates that the applicant presented a French passport with a fictitious name when entering the United States on April 13, 2006, in order to enter the United States under the Visa Waiver Program. The applicant was discovered to have an additional passport, and subsequently

pled guilty to a criminal charge of 18 U.S.C. § 1546(a), passport fraud, admitting that he had obtained the stolen French Passport through fraudulent means. The applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for misrepresenting his identity when entering the United States. The applicant does not contest this ground of inadmissibility.

Section 212(i) of the Act provides, in pertinent part:

> (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

The record shows that the applicant has been convicted of passport fraud under 18 U.S.C. § 1546(a) and was found inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act by the field office director. The applicant has not disputed this finding on appeal. Because the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not review the determination of the applicant's inadmissibility under section 212(a)(2)(A)(i)(I).

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang,* 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include 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.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g.*, *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel for the applicant asserts on appeal that the Field Office Director failed to give proper weight to hardship impacts the applicant's spouse would experience upon relocation to Cameroon. *Brief in Support of Appeal*, received October 16, 2009. He asserts that the country is not safe, that the police

are corrupt and cannot be relied upon to provide security, or even evidence that crimes have occurred for the applicant's family, and that because of gender discrimination in Cameroon the applicant's spouse would have to give up her career and have no hope of commensurate employment or opportunity in Cameroon. Counsel also asserts that the Field Office Director failed to accord proper weight to evidence of the applicant's spouse's mental health condition and the lack of available medical care for her condition in Cameroon. Counsel further asserts that the Field Office Director failed to consider that the applicant's spouse would be forced by cultural pressure to relocate to Cameroon with the applicant and that, when considered in the aggregate, the hardship impacts on her would rise to the level of extreme hardship.

The applicant's spouse has submitted a letter stating that she would experience extreme hardship if she were to relocate to Cameroon. *Statement of the Applicant's Spouse*, May 28, 2009. She explains that due to cultural beliefs she would be pressured into relocating to Cameroon by her family and that having to do so would result in extreme hardship on her due to the conditions present in the country. She states that crime and political violence are escalating and that there is extensive discrimination against women and she would not have the same career opportunities she has in the United States.

The record includes country conditions materials which detail the political turmoil in Cameroon, and which highlight the rising incidence of political violence, crime and police corruption. There is also significant evidence that Cameroon does not provide the same opportunities for women as does the United States. There are a number of letters from friends and family members which assert that the applicant's spouse should reside with her husband, all of which assert that there is a high incidence of crime in Cameroon and relating instances in which family members have been impacted by the crime there. The weight of the evidence in this case indicates that the conditions in Camaroon would present a physical danger to the applicant's spouse. The AAO also takes note of the fact that the applicant's spouse recently had a child. Although children are not qualifying relatives in this proceeding, the AAO finds it reasonable to conclude that having to provide for a young child would compound the hardships to the applicant's spouse upon relocation. Based on these observations the AAO can conclude that the applicant's spouse would experience an uncommon physical hardship upon relocation to Cameroon.

The AAO notes that the record contains documentation submitted to establish that the applicant's spouse has been diagnosed with depression and anxiety with a number of somatic symptoms. There are letters from two separate mental health practitioners stating that she is experiencing some form of depression due to the applicant's inadmissibility and which recommend that she consider taking anti-depression medication. While the AAO does not consider the statements from [redacted] and [redacted] to be sufficiently probative to establish extreme hardship based on her mental health, it does find that they constitute sufficient evidence to establish that she will experience some emotional hardship due to the applicant's inadmissibility. As such, the AAO may consider that having to relocate abroad would sever important community ties for the applicant's spouse, disrupting the continuity of her medical care. In addition, evidence in the record reflects that the applicant's spouse may have difficulty obtaining medical care for her mental health condition in Cameroon.

The AAO will also give this factor some consideration when aggregating the impacts to the applciant's spouse upon relocation.

Counsel has also asserted that the applicant's spouse would experience hardship from having to end her successful career in the United States in order to relocate to Cameroon. While the AAO acknowledges that the applicant's spouse would not have the same education or employment opportunities in Cameroon, and that she would have to leave behind her U.S. based employment in order to reside with the applicant, the record does not establish that she would be unable to secure employment in Cameroon.

However, when the impacts on relocation are considered in the aggregate, the AAO can determine that the applicant's spouse would experience uncommon hardships, and as such, the applicant has established that a qualifying relative would experience extreme hardship upon relocation.

Although the applicant has established that a qualifying relative will experience extreme hardship upon relocation, it must still be established that a qualifying relative would experience extreme hardship due to separation.

Counsel for the applicant has not articulated what impacts the applicant's spouse would experience if she were to remain in the United States, other than to assert that she is suffering from a mental health condition related to the applicant's absence.

When the evidence of her mental condition is examined, three letters from two mental health practitioners which attest to symptoms of Major Depression and a potential need for medication, it is not clear that the impacts she will experience due to her condition rise above the common impacts of separation on spouses who remain in the United States. Although the expert testimony of mental health practitioner is certainly welcome, the AAO notes that it must examine whether the hardship attested to rises above what is commonly experienced. Although [redacted] uggests that the applicant's spouse may need to be considered for perscription medication, there is no other indication that the applicant's spouse's condition could not be controlled, or that her current condition constitutes an uncommon impact on her ability to function on a daily basis. In this case, the submitted evaluations fail to significantly distinguish the emotional or mental impacts on the applicant's spouse from that what is common to a degree constituting an uncommon hardship. Nonetheless, the AAO will give some consideration to the fact that the applicant's spouse will experience an emotional impact due to the applicant's absence.

The record contains employment and tax records for the applicant's spouse, indicating that she has been gainfully and steadily employed, and earned a salary of $105,506 in 2007. There is no indication that the applicant's spouse would be unable to meet her financial obligations based on this salary.

The record does not contain sufficient evidence to establish that the impacts on the applicant's spouse due to separation, even when considered in aggregate, rise to the level of extreme hardship.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case. As the applicant has failed to establish extreme hardship to a qualifying relative, on purpose would be served in determining whether he warrants a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *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.