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

U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: ATLANTA, GA (CHARLOTTE) Date: APR 19 2010

IN RE: Applicant: [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 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.

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Shumway

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant, [redacted] is a native and citizen of Guinea 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of [redacted] a citizen of the United States. He sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The 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) accordingly. *Decision of the Field Office Director, dated September 12, 2007.* The applicant submitted a timely appeal.

In his affidavit submitted on appeal, the applicant contends that Guinea is impoverished and is experiencing a political upheaval. He states that he did not intend to misrepresent himself when he applied for a visa in 1995, that he left Guinea because he feared for his life, and that Guinea has major political unrest. The applicant asserts that his wife takes medication for medical problems, which are: hypertension, diabetes, high cholesterol, and degenerative arthritis. He states that her health problems make living in Guinea, a country where there are poor public health conditions, difficult. The applicant asserts that his wife needs him in the United States. He claims that his wife takes care of her parents and requires his assistance. The applicant states that his wife's status as a woman and a Christian may subject her to severe oppression in Guinea, which is a predominately Muslim country.

The AAO will first address the finding of inadmissibility. 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.

The Form I-485, Application to Register Permanent Residence or Adjust Status reflects that the applicant admitted to misrepresenting his marital status when he applied for a non-immigrant visitor visa at the U.S. Embassy in Guinea in 1995 in order to procure a visa. In view of the applicant's admission to a misrepresentation of a material fact, that of his marital status and his eligibility for admission to the United States, the AAO concurs that he is inadmissible under section 212(a)(6)(C) of the Act.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states 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.

The waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act. Thus, hardship to the applicant and his stepchildren will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's U.S. citizen spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). *Matter of Cervantes-Gonzalez* lists the factors considered relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors relate to an applicant's qualifying relative and 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.* at 565-566.

Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship a qualifying relative pursuant to section 212(i) of the Act. 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.* at 565-566.

In *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the

"[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

In rendering this decision, the AAO has carefully considered all of the evidence in the record.

Extreme hardship to the applicant's spouse must be established in the event that she remains in the United States without the applicant, and alternatively, if she joins the applicant to live in Guinea. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

With regard to remaining in the United States without her husband, in her declaration, [redacted] asserts that she has: hypertension, diabetes, arthritis, and high cholesterol. She states that she was hospitalized in 2002 and in intensive care for eight days, and was hospitalized in April 2005 for four days. The letter by [redacted] dated October 9, 2007 indicates that [redacted] medications are: Glucophage, Lipitor, Accupril, Zyrtec, and Diflucan. [redacted] asserts that it is "medically in the best interest" of [redacted] to have a permanent caretaker, and that "it would be a medical hardship" if she were left alone to care for herself. [redacted] states in her letter that [redacted] father has diabetes requiring insulin, heart disease, seizures, cancer, and glaucoma; and she also states that [redacted] takes care of her father. Except for the letter by [redacted] there is no documentation in the record suggesting that [redacted] requires a permanent caretaker. Even though [redacted] has medical problems, the AAO finds that the applicant has not demonstrated that she is unable to take care of herself. The applicant claims that he needs to remain in the United States to assist his wife in the care of her parents. Although the record shows that the applicant's father-in-law has serious health problems, the applicant has not established that his wife is unable to take care of them. 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).

[redacted] states that she and her children, grandchildren, and parents have a close relationship with the applicant. Family separation must be considered in determining hardship. *See, e.g., Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) ("the most important single hardship factor may be the separation of the alien from family living in the United States"). However, courts have found that family separation does not conclusively establish extreme hardship. In *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS,* 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). In *Perez v. INS,* 96 F.3d 390, 392 (9th Cir. 1996), states that "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir.1991).

The record reflects that the applicant's spouse is concerned about separation from her husband. The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of separation. After careful consideration, it finds that the situation of the applicant's spouse, if she remains in the United States without her husband, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The emotional hardship to be endured by the applicant's spouse is not unusual or beyond that which is normally to be expected upon an applicant's bar to admission to the United States. *See Hassan* and *Perez, supra*.

When the evidence is considered collectively, the AAO finds that the applicant has shown that his spouse has health problems. However, he has not provided sufficient documentation to establish that she is unable to take care of herself. The applicant's spouse will experience emotional hardship if separated from her husband, but her hardship has not been shown to be "unusual or beyond that which would normally be expected" from an applicant's bar to admission. In considering all of the hardship factors presented collectively, the AAO finds they fail to demonstrate that the applicant's spouse would experience extreme hardship if she remained in the United States without her husband.

The applicant contends that the public health conditions in Guinea would be difficult for his wife because of her health problems, that Guinea has major political unrest, and that she needs to stay in the United States to take care of her parents. That Guinea has major political unrest and has dire living conditions is conveyed in recent documents by the United Nations Office for the Coordination of Humanitarian Affairs. The record reflects that [redacted] has provided care for her father, who is 85 years old, has ongoing serious health problems. The combined factors of the conditions in Guinea and the age and health problems of [redacted] father establish that [redacted] would experience extreme hardship if she joined her husband in Guinea and was no longer available to take care of her father.

Based upon the record before the AAO, the applicant in this case established extreme hardship to his spouse if she were to join him to live in Guinea. However, he has failed to establish extreme hardship if she remained in the United States without him. Thus, the record fails to demonstrate extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act, 8 U.S.C. § 1182(i).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

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. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.