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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

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: DENVER, COLORADO Date: JUL 26 2010

IN RE: [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 PETITIONER:

SELF-REPRESENTED

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 $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Ellen S. Johnson

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

The applicant is a native and citizen of the Ivory Coast who has resided in the United States since February 2000, when she came to the United States using a French passport. She 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. The applicant is the beneficiary of an approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360). 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.

The Director concluded that the applicant failed to establish that she would endure "extreme hardship," and denied the application accordingly. *See Decision of the District Director* dated December 31, 2007.

On appeal, prior counsel for the applicant provided a brief to accompany the Notice of Appeal (Form I-290B) and referenced exhibits. The entire record was reviewed and considered in rendering a decision on the appeal.

In his appeal brief, counsel asserts that the applicant would experience financial and emotional hardships, as well as safety concerns within the applicant's home country, should she be returned to the Ivory Coast.

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.

The record reflects that on or about February 19, 2000, the applicant used a French passport, which did not belong to her, in order to obtain admission to the United States, making her inadmissible under the Act.

Section 212(i) of the Act provides that:

> 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

Sec. 204(a)(1)(A) of the Act provides:

> (iii) (I) An alien who is described in subclause (II) may file a petition with the Attorney General [Secretary] under this clause for classification of the alien (and any child of the alien) if the alien demonstrates to the Attorney General [Secretary] that--
>
> > (aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and
> >
> > (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.
>
> (II) For purposes of subclause (I), an alien described in this subclause is an alien--
>
> > (aa)(AA) who is the spouse of a citizen of the United States;

The applicant filed her I-360 petition as the abused spouse of a United States citizen under Section 204(a)(1)(A)(iii) of the Act. Section 212(i) authorizes the Secretary to waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien granted classification under clause (iii) of section 204(a)(1)(A) if the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified parent or child.

Accordingly, as the beneficiary of an approved I-360, the applicant must demonstrate extreme hardship to herself as there is no evidence in the record that she has any other qualifying relatives. 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 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 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 Board of Immigration Appeals (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). 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).

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the court held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. In *Hassan v. INS*, *supra,* the court further held that the uprooting of family and separation from friends does not necessarily amount to extreme hardship, but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In this case, the applicant must demonstrate that she would endure extreme hardship, if she were to be returned to the Ivory Coast.

The record contains evidence relating to the country conditions in the Ivory Coast, including country reports and news articles. In addition, the applicant submitted her medical records and documentation that she has been sending money to the Ivory Coast.

The applicant must establish that she would suffer extreme hardship were she to be returned to the Ivory Coast due to her inadmissibility. With respect to this criterion, prior counsel for the

applicant contends that the applicant will suffer emotional, medical, and financial hardships should the applicant not be granted a waiver. In the applicant's affidavit, she explains that she has been supporting her children, parents, sister and sister's children financially by sending money to them in the Ivory Coast. The money orders were provided to verify such assertions. In addition, the applicant's affidavit asserts that she would not be able to find employment to support her family in the Ivory Coast, which would make it difficult for her family to survive. The applicant's affidavit also discusses the general problems with her home country and her fear regarding her safety, should she be returned. She provided country condition information to support these contentions. In addition to the emotional and financial hardships referenced above, the record indicates that the applicant is suffering from health issues such as depression, anxiety and skin ailments, and that such problems would be difficult to treat in the Ivory Coast. Although the AAO does not find that her health issues alone would lead to a finding of extreme hardship, her medical issues support a finding of extreme hardship when they are considered in the aggregate with the other hardships she would experience upon return to the Ivory Coast.

The record reflects that the cumulative effect of the country conditions in her home country, as well as the emotional, financial and medical hardships she is facing and could potentially encounter, should she be returned to the Ivory Coast, rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to her inadmissibility, she would suffer extreme hardship.

Considered in the aggregate, the applicant has established that she would face extreme hardship if her waiver request was denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

> We find this use of *Matter of* [redacted], as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of* [redacted], is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of

> the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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). . . .

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardship the applicant would suffer if she were returned to the Ivory Coast, numerous letters of support from friends and co-workers, her gainful employment and payment of taxes, and the apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's fraudulent entry to the United States and periods of unauthorized presence and employment.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility

for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.

We note that the director denied the Form I-485, application to adjust status, solely on the basis of the applicant's inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), and the director's denial of the Form I-601 waiver application. *Decision of the Director*, dated December 31, 2007. The director's denial of the Form I-485 was premature, as the applicant timely filed the instant appeal. Because the appeal will be sustained, there remains no basis, in the present record, for the denial of the adjustment application. Accordingly, the director should reopen the adjustment application pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(i) and issue a new decision.

ORDER: The appeal is sustained.