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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: PHILADELPHIA, PA

Date:

MAY 28 2010

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.

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mali who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having entered the United States by fraud or willful misrepresentation. 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 concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *Decision of the Acting District Director*, dated March 24, 2006.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED] indicating they were married on April 19, 2002; an affidavit from [REDACTED]; a letter from [REDACTED] physician; copies of [REDACTED] and the applicant's medical records; a copy of the 2004 U.S. Department of State Country Reports on Human Rights Practices for Mali and other background materials addressing conditions in Mali; a statement from the applicant's employer; tax and other financial documents; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision.

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 acting district director found, and the applicant admits, that he intentionally misrepresented his marital status by telling a U.S. consular officer that he was married in order to obtain a visitor's visa to enter the United States. *See Application for Waiver of Ground of Excludability (Form I-601)*,

signed by the applicant on September 20, 2005. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring a visa for admission into the United States by willful misrepresentation. The applicant does not contest his inadmissibility on appeal.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C)(i) 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. See Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-66 (BIA 1999), provides a list of factors the Bureau of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship under the Act. These 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.

In this case, the applicant's wife, [REDACTED], states that she is emotionally and financially dependent on her husband. She states that they lost their first unborn child together on August 18, 2005, due to an automobile accident. [REDACTED] states that they are trying to conceive a child and that if her husband were sent back to Africa, it "would be a devastating blow to [her] and [their] family planning" as they are both thirty-four years old and plan to have two children by the age of forty. In addition, [REDACTED] states that she is not currently working as a result of the car accident and contends she would suffer economic hardship because she cannot afford to pay the bills on her own. She states she is planning on going back to law school and that if her husband returned to Africa, it would not be possible for her to continue her education. Moreover, [REDACTED] states she has two children from a previous relationship and that her husband is a strong male influence in her sixteen year old son's life. She claims her son's biological father "wants nothing to do with him," and that her son would lose another father if the applicant were not permitted to stay in the United States, causing a great emotional strain on him as well as her daughter. According to [REDACTED], it would be impossible for her to move to Mali to be with her husband because she and her children do not speak the language there and "the economic and education conditions [are] not suitable." *Affidavit of [REDACTED]*, dated October 14, 2005.

A letter from [REDACTED] physician states that [REDACTED] was injured on August 2, 2005, and was unable to return to work until she was "better stabilized clinically." The letter states that [REDACTED] was diagnosed and treated for acute closed head trauma, acute traumatic cervical spine sprain and strain, acute traumatic dorsal lumbar spine sprain and strain, and acute traumatic left knee strain which exacerbated a previous left knee derangement. *Letter from [REDACTED]*

[REDACTED], dated September 14, 2005. Medical documentation in the record shows that [REDACTED] had a miscarriage and underwent related surgery in August 2005.

Counsel states that the applicant is financially supporting the entire family. In addition, according to counsel, [REDACTED] and her daughter “would be in danger [if they moved to Mali] since it is a country where female genital mutilation is regularly performed.” Counsel contends that almost 94% of women between the ages of 15 and 49 are circumcised and that individuals who are not circumcised are considered children regardless of their age. In addition, counsel contends that moving [REDACTED] children to Mali would limit their education because most children in Mali leave school by the age of twelve. Moreover, counsel states that since [REDACTED] is not currently working, if the applicant’s waiver application were denied, she would be forced to go on public assistance. *Letter from [REDACTED]*, dated April 25, 2006.

After a careful review of the record, there is insufficient evidence showing that the applicant’s wife would suffer extreme hardship as a result of the applicant’s waiver application being denied.

The AAO finds that if [REDACTED] had to move to Mali to be with her husband, she would experience extreme hardship. The record shows that [REDACTED], her parents, and her children were all born in the United States and do not speak any African languages. The record also shows that [REDACTED] has worked as a mental health technician since November 1995. *Biographic Information (Form G-325A)*, undated. [REDACTED] and her two children would need to adjust to a life in Mali, a difficult situation made even more complicated given the country conditions in Mali. The submitted U.S. Department of State country report on Mali shows that Mali is a very poor country with most of the work force employed in the agricultural sector. In addition, as counsel contends, the report shows that approximately 95% of women in Mali have undergone female genital mutilation, that the practice is widespread among most regions and ethnic groups, and that it is not subject to religion or class boundaries. Furthermore, the report indicates that women have very limited access to legal services, employment, and educational opportunities. Moreover, as counsel states, most children leave school by the age of 12 and “poverty, and cultural tendencies . . . place less emphasis on [the] education of girls” *2004 U.S. Department of State Country Reports on Human Rights Practices for Mali*. The 2009 U.S. Department of State Report on Human Rights Practices in Mali contains a similar synopsis of country conditions in Mali.

Nonetheless, [REDACTED] has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. If [REDACTED] decides to remain in the United States, their situation is typical of individuals separated as a result of inadmissibility and does not alone rise to the level of extreme hardship based on the record. Federal courts and the BIA have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

Regarding [REDACTED]'s financial hardship claim, according to the most recent tax documents in the record, in 2003, the applicant earned \$900 in wages and [REDACTED] earned \$45,846 in wages. The record further shows that the applicant was unemployed from 1997 through January 2003. *Biographic Information (Form G-325A)*, dated January 2, 2003. Therefore, the record shows that [REDACTED] has been the primary, if not sole, source of financial support for the family. Although [REDACTED] contends she is no longer working due to injuries sustained during a car accident in August 2005, and counsel claims the applicant is now the sole source of financial support for the entire family, there is no evidence, such as a letter from the applicant's employer or a pay stub, addressing the applicant's current employment or wages. Without more detailed information, the AAO is not in the position to attribute any financial difficulties [REDACTED] may experience to the applicant's departure.

To the extent [REDACTED] wants to have two more children before she turns forty, wants to go to law school, and is concerned about the effect the applicant's departure will have on her two children, there is no claim or evidence suggesting that the hardship she would suffer is unusual or beyond that which would normally be expected under the circumstances.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. 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(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *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.