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U. S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



115

Date: **APR 25 2011**

Office: ATLANTA

FILE: 

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:

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 must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility 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 is a native and citizen of Guinea 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 willfully misrepresenting a material fact to procure admission into the United States. The applicant is applying for a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse and daughter.

The field office director determined that the applicant failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated August 13, 2009.

On appeal, counsel asserts that the applicant's spouse is a full-time student, and the applicant is the caregiver of their daughter. Counsel states that the applicant's toddler "has severe acid reflux due to her formula being incompatible with her digestive system." Counsel contends that the "great and extreme violence and human rights violations in Guinea" would cause the applicant's spouse "extraordinary mental anguish and deep sorrow" because of her concern for the applicant. Counsel contends further that the applicant's daughter will be forced to undergo female genital mutilation if she relocates to Guinea. *Statement on Notice of Appeal (Form I-290B)*, dated September 2, 2009.

In support of the waiver application, the record includes, but is not limited to, country condition reports, conviction records, medication documentation, the applicant's passport, the applicant's daughter's birth certificate, the applicant's marriage certificate, the applicant's spouse's birth certificate, and an approved alien relative petition (Form I-130). The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The director found the applicant inadmissible under section 212(a)(6)(C) of the Act for having presented the passport and visa of another person to be admitted to the United States on April 6, 2001. The record supports this finding, and the AAO concurs that this misrepresentation was material. The applicant has not disputed his inadmissibility on appeal. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

In addition, the record reflects that on February 25, 2005 the applicant was convicted in the Fulton Superior Court of criminal sale of recorded material in violation of Georgia Code § 16-8-60. The applicant was sentenced to confinement for a period of one year, which he was allowed to serve on probation (criminal action no. 05SC26841).

Georgia Code § 16-8-60 provides, in pertinent part:

(a) It is unlawful for any person, firm, partnership, corporation, or association knowingly to:

...

(2) Sell; distribute; circulate; offer for sale, distribution, or circulation; possess for the purpose of sale, distribution, or circulation; cause to be sold, distributed, or circulated; cause to be offered for sale, distribution, or circulation; or cause to be possessed for sale, distribution, or circulation any article or device on which sounds or visual images have been transferred, knowing it to have been made without the consent of the person who owns the master phonograph record, master disc, master tape, master videotape, master film, or other device or article from which the sounds or visual images are derived.

The AAO notes that the applicant's conviction for criminal sale of recorded material could render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. For example, in *Matter of Kochlani*, 24 I&N Dec. 128, 131 (BIA 2007), the BIA determined that trafficking in counterfeit goods is a crime involving moral turpitude because it is "tantamount to commercial forgery" and involves the theft of someone else's property in the form of a trademark. 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 at this time make a determination on the applicant's inadmissibility under section 212(a)(2)(A)(i)(I).

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 deportation is relevant to section 212(i) waiver proceedings only to the extent it results in hardship to a qualifying relative, in this case the applicant's spouse. 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. Cf. *Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their

parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on a qualifying relative, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

Upon review of the record, the AAO finds that the applicant has failed to establish that his spouse would suffer extreme hardship if she decided to relocate with the applicant to Guinea to maintain family unity.

In the brief filed with the waiver application, counsel asserts that if the applicant’s spouse and daughter relocated to Guinea, the applicant’s daughter “will be circumcised against his will.” Counsel notes that “[r]elatives clandestinely take girls to have them circumcised in spite of the mother or father’s opposition.” Counsel further asserts that the applicant’s daughter “suffers from severe acid reflux due to the fact that it is yet to be determine[d] which baby formula is compatible with her digestive system.” Counsel states that Guinea’s health care system is “severely lacking” and it “greatly reduces the chances of their little girl receiving adequate medical attention.” Finally, counsel contends that the “civil strife and rampant abuse of human rights violations is of great concern.” Counsel notes that the applicant’s spouse does not speak French, or the local dialects in Guinea. *I-601 Brief*, dated August 2, 2008.

The applicant and his spouse have a three-year-old U.S. citizen daughter who counsel asserts would be subjected to female genital mutilation (FGM) if she relocated to Guinea. Hardship to the applicant’s daughter will be considered insofar as it results in hardship to the applicant’s spouse. The U.S. Department of State’s recent report on human rights practices in Guinea indicates that FGM is prevalent in the country. The report provides that, “FGM was practiced widely in all regions among all religious and ethnic groups, primarily on girls between the ages of four and 17 . . . According to a 2005 Demographic and Health Survey, 96 percent of women in the country had undergone the procedure.” *U.S. Department of State, 2010 Human Rights Report: Guinea*, dated April 8, 2011. Although it has been established that FGM is prevalent in Guinea, the record does not contain a statement from the applicant or his spouse describing their opposition to the practice, and their concerns that their daughter will be subjected to FGM despite their opposition. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel has stated that the applicant's daughter would receive inadequate health care in Guinea. It should be noted that the U.S. Department of State travel advisory on Guinea warns that medical facilities "are poorly equipped and extremely limited, both in the capital city and throughout Guinea." *U.S. Department of State, Country Specific Information, Guinea*, dated February 4, 2011. The record contains the applicant's daughter's medical records, but there is nothing in plain language from a health care professional diagnosing the applicant's daughter with a medical condition. 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)). Accordingly, the applicant has not shown that his daughter or spouse has an ongoing and chronic health condition that would go untreated in Guinea.

Finally, counsel has indicated that the applicant's spouse will suffer from the "civil strife and rampant abuse of human rights" in Guinea. The U.S. Department of State has noted that Guinea has had episodes of politically motivated violence. The Department of State travel advisory states that "Guinea's first democratically-elected President Alpha Condé was inaugurated on December 21, 2010. The second round of presidential elections was marked by ethnic-based violence between supporters of both Presidential candidates, and reports of excessive force and sexual assaults perpetrated by undisciplined members of Guinea's armed forces. Although the situation has remained calm following the Supreme Court's December 3 proclamation of election results, there is nevertheless a residual potential for violence in Guinea." However, the applicant has not indicated where his spouse would reside should she decide to relocate to Guinea. Nor has he described his prior residence in Guinea, and whether he or his family members have been the victims of violence in the country. Therefore, the AAO cannot find that the applicant's spouse would experience hardship from residing in an area of Guinea where she could be subjected to violence.

The AAO recognizes that relocation to Guinea would cause some hardship to the applicant's spouse. The record reflects that the applicant's spouse was born in North Carolina, and according to her Biographic Information Form (Form G-325) has never resided outside the United States. Counsel has indicated that the applicant's spouse does not speak Guinea's official language, French, or any of the local dialects. The AAO will give weight to the hardships that will arise from the applicant's spouse's adjustment to a new country, language and culture. However, in light of the applicant's failure to submit statements or other direct evidence to assert and support claims of hardship, we find that the applicant has not demonstrated that such hardship is beyond the common hardships that typically arise when an individual moves to another country due to a spouse's inadmissibility.

Upon review of the record, the AAO finds that the applicant has also failed to establish that his spouse would suffer extreme hardship if she decided to remain in the United States separated from him.

In the brief filed with the waiver application, counsel asserts that the applicant's spouse is enrolled in school and is employed part-time. Counsel states that the applicant has "assumed fully and solely the active role of parenting and seeing to the daily needs of" his daughter. Counsel states that "the political upheaval and violence that permeates countrywide would not make visits to Guinea a viable

option for the applicant's U.S. citizen spouse and child." Counsel contends that the applicant's spouse and child "could have to constantly, on a daily basis worry about the safety of her daddy/her husband in a country that has been in turmoil for many years."

The AAO notes that counsel's assertion of financial hardship to the applicant's spouse is not demonstrated by the record. The record does not contain evidence of the applicant's spouse's enrollment in school. Nor does it show that she is engaged in part-time employment. Further, there is no evidence of her household expenses. The Biographic Information Forms (Form G-325) filed on behalf of the applicant and his spouse indicate that they are both unemployed. The applicant has failed to explain how he and his spouse pay their household expenses without either of them maintaining full-time employment. As stated, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. Accordingly, the AAO cannot assess the extent of the financial hardship the applicant's spouse would suffer if she is separated from the applicant.

Counsel has asserted that there is "political upheaval and violence that permeates countrywide" in Guinea, and these conditions would cause the applicant's spouse and daughter to worry about the applicant's safety. Counsel contends that these conditions would render it a nonviable option for the applicant's spouse and daughter to visit the applicant in Guinea. The AAO has reviewed the current country conditions in Guinea, and according to the U.S. Department of State report, Guinea has had episodes of politically motivated violence. *See U.S. Department of State, Country Specific Information, Guinea*, dated February 4, 2011. However, these assertions are solely from counsel. The unsupported assertions of counsel do not constitute evidence. Neither the applicant nor his spouse has described their concerns about the conditions in Guinea. The applicant has not indicated where his spouse would reside should she decide to relocate to Guinea. Nor has he described his prior residence in Guinea, and whether he or his family members have been the victims of violence in the country. Accordingly, the AAO cannot find that the conditions in Guinea are such that the applicant's spouse would be unable to visit him, or that she would suffer from excessive concern about the applicant's safety and well-being.

The AAO acknowledges that the applicant's spouse will some experience emotional hardship if she is separated from him. In *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals, referring to the separation of an alien from qualifying relatives, held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and that "[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." (Citations omitted). However, in this case, the applicant and his spouse have not described the emotional hardship they would suffer upon separation. Therefore, the applicant has failed to show that the hardship his spouse would suffer is beyond the ordinary hardship suffered by individuals who are separated as a result of inadmissibility.

In this case, the record does not contain sufficient evidence to show that the applicant's spouse would suffer extreme hardship if the applicant is denied admission to the United States. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility

under section 212(i) of the Act. 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 establishing that the application merits approval 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.