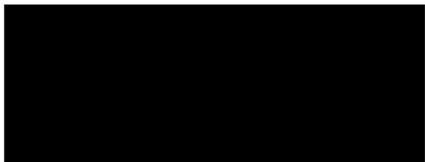


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



PHOTOCOPY



H5

Date: **MAY 20 2011**

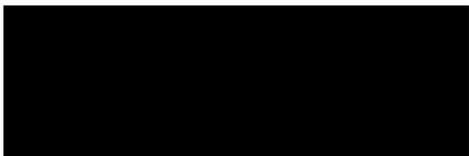
Office: NEW YORK, NEW YORK

FILE:

IN RE: Applicant:

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 waiver application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant 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 procuring admission to the United States through fraud or the willful misrepresentation of a material fact. The applicant is the son of a United States citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his father and siblings.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated August 25, 2008.

On appeal, the applicant, through counsel, claims that the applicant's father will suffer extreme and unusual hardship, as he "suffers from high blood pressure and is dysfunctional and mentally unstable." *Form I-290B*, filed September 18, 2008.

The record includes, but is not limited to, counsel's letter, a statement and affidavit from the applicant's father, letters of support for the applicant, a lease agreement for the applicant's father, pay stubs and an employment verification for the applicant, school records for the applicant, money transfer receipts, copies of phone cards, tax documents for the applicant's father, arrest and conviction records for the applicant, and a 2005 U.S. Department of State country report on Guinea. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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 Act is inadmissible.
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], 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 resident spouse or parent of such an alien...

In the present case, the record indicates that on April 23, 1998, the applicant entered the United States using a visa in another individual's name.

On appeal, counsel claims that the applicant was fourteen years old when he entered the United States, and he was "listed on his aunt's passport as [REDACTED] which was an [sic] mistake and an error and when he obtained his own passport he was [REDACTED] his true African name in 2004." In a letter filed October 28, 2008, counsel claims that "[e]ven though the I-94 shows the name [REDACTED] the very same person is actually also known as [REDACTED]. Counsel contends that "[t]here is no fraud here because [REDACTED] and [REDACTED] are and [sic] the same person. It is customary in Guinea for Moslems to use [REDACTED] and [REDACTED] which refer to the same person."

The AAO finds counsel's contention that the applicant is not inadmissible to the United States through the misrepresentation of a material fact to be unpersuasive. The AAO observes that in waiver proceedings the burden of proof is on the applicant to establish admissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO notes that the record establishes that on April 23, 1998, the applicant entered the United States on a B-2 visa under the name of "[REDACTED]" Additionally, the AAO notes that it appears that the birth date listed for the applicant on the B-2 visa is listed as February 10, 1985. However, the record establishes that the applicant's true birth date is December 30, 1984. *See extract from the registry of birth certificates*, dated December 31, 1984. Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) for willfully misrepresenting a material fact in order to seek admission into the United States.

The record shows that the applicant has been convicted of disorderly conduct and trademark counterfeiting in the third degree.¹ The District Director did not address whether or not these convictions are crimes involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Nevertheless, because the applicant is 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 determine whether the applicant is inadmissible 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's father 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 United States Citizenship and Immigration Service (USCIS) then assesses whether a

¹ The AAO also notes that the applicant was arrested on March 16, 2008 for grand larceny; however, no criminal court disposition has been submitted for this arrest.

favorable exercise of discretion is warranted. See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (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 (Board) 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.

The first prong of the analysis addresses hardship to the applicant's father if he relocates to Guinea. In an affidavit dated December 2, 2006, the applicant's father states he "will suffer an exceptional amount of hardship living outside the United States." Counsel states the applicant's father "suffers from high blood pressure and is mentally unstable and somewhat dysfunctional." Counsel also states that all of the applicant's father's children are in the United States. However, the AAO notes that the applicant's father states that of his six children, five reside in the United States and one resides in Guinea. The applicant's father states he does not own any property in Guinea, and he supports his "family here and in Guinea." Additionally, he states "Guinea is viewed as a country with high inflation, severe power blackouts and water shortages, lack of health care services and basic infrastructure which is combined with endemic poverty that causes systemic pressure on the daily life." The AAO notes the applicant's father's concerns.

The AAO acknowledges the claims made regarding the difficulties the applicant's father would face in returning to Guinea. The AAO notes that the applicant's father has been residing in the United States for many years. However, the AAO observes that the applicant's father is a native of Guinea and the record does not establish that he does not speak useful languages or that he has no family ties to Guinea. In fact, as noted above, the applicant's father's daughter resides in Guinea. The AAO notes the claims made regarding the applicant's father financially assisting his family in Guinea; however, no documentary evidence was submitted establishing that he cannot continue to provide that financial assistance from a location outside the United States. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). Additionally, the AAO notes that other than a 2005 U.S. Department of State country report on Guinea, no updated country conditions materials or documentation has been submitted to establish that the applicant's father would be unable to obtain employment in Guinea. Further, other than counsel's claims, no medical documentation has been submitted establishing that the applicant's father suffers from any medical conditions or the severity of his medical conditions. The AAO notes that without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N

Dec. 503, 506 (BIA 1980). Additionally, the AAO notes that the record does not include supporting documentary evidence that the applicant's father cannot receive appropriate treatment for his claimed medical issues in Guinea. Therefore, based on the record before it, the AAO finds that the applicant has failed to establish that his father would suffer extreme hardship if he relocated to Guinea.

In addition, the record does not establish extreme hardship to the applicant's father if he remains in the United States. The applicant's father states he and his children "will suffer an immeasurable amount of hardship should [they] be separated from [the applicant]." Counsel states the applicant's "father would suffer extreme hardship because he is an older man who solely depends upon the [a]pplicant for his daily living." In a statement dated June 15, 2006, the applicant's father states the applicant provided him assistance when he "experienced medical problems." He claims that he was involved in a car accident and "lost [his] sight in one eye." He states that during that time, the applicant cared for him. Additionally, as noted above, counsel claims that the applicant's father "suffers from high blood pressure and is mentally unstable and somewhat dysfunctional." Counsel states the applicant's father "is emotionally very much attached to [the applicant]." The applicant's father states the denial of the applicant's waiver application "will devastate [him] and all of [the applicant's] siblings." The AAO notes the mental health and medical concerns of the applicant's father.

The applicant's father claims that he owns a small store in the Bronx and the applicant "helps [him] with the store." As noted above, the applicant's father states he supports his "family here and in Guinea." The applicant's father also states the applicant "accepted a second job to help [him] and his family financially." Counsel states the applicant "provides financial assistance to his father." Additionally, the applicant's father states the applicant helps care for his siblings. The AAO notes the applicant's father's financial concerns.

The AAO finds the record to include some documentation of the applicant's father's income and expenses; however, this material offers insufficient proof that he will be unable to support himself in the applicant's absence. The AAO notes that the record does not contain any documentary evidence establishing that the applicant's father owns a store in the Bronx and that the applicant helps him in the store. Additionally, the AAO notes that the applicant has not distinguished his father's financial challenges from those commonly experienced when a relative remains in the United States alone. The AAO also notes that no evidence has been submitted establishing that the applicant's father relies on financial support from the applicant. In fact, the AAO notes that the applicant's father states he provides support to the applicant. Further, the submitted evidence does not establish that the applicant would be unable to obtain employment in Guinea and, thereby, financially assist his father from outside the United States. The AAO also notes that the applicant has not distinguished his father's emotional hardship due to family separation from that which is commonly experienced when relatives reside apart as a result of inadmissibility. Additionally, the AAO notes that the record does not establish through documentary evidence that the applicant's father requires the assistance of the applicant because of his medical condition(s). Further, the AAO notes that no medical documentation has been submitted establishing that the applicant's father suffers from any medical conditions or the severity of his medical conditions. The AAO also notes that other than counsel's statement, there is no evidence in the record establishing that the applicant's father is mentally unstable and dysfunctional. Based on the record before it, the AAO

finds that the applicant has failed to establish that his father would suffer extreme hardship if his waiver application is denied and he remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's father 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)(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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.