



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **SEP 18 2013**

OFFICE: CLEVELAND, OHIO

File: [REDACTED]

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:

INSTRUCTIONS:

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Cleveland, Ohio denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Ivory Coast who contends that she is 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 to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The record indicates that the applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). She 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.

The field office director concluded that the applicant failed to establish the manner in which she entered the United States and thus found her to be inadmissible pursuant to section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i), for having been present in the United States without being admitted or paroled. *See Decision of the Field Office Director*, dated March 7, 2013. Because there is no waiver for section 212(a)(6)(A)(i) inadmissibility, the field office director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Id.*

On appeal counsel asserts that the applicant provided sufficient proof to establish the manner and circumstances of her entry into the United States, and that if a waiver is not granted, her U.S. citizen spouse and children will suffer extreme hardship. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received April 1, 2013.

The record contains, but is not limited to: Form I-290B, counsel's statement thereon, appeal brief and earlier brief in support of a waiver; various immigration applications and petitions; letters from the applicant, her sister and spouse concerning her manner of arrival; a hardship letter from the applicant's spouse; letters of character reference, support and concern; a psychological evaluation; medical records; country conditions documents for the Ivory Coast; business-related documents; divorce, marriage and birth certificates; and documents related to the applicant being a victim of identity theft. The entire record was reviewed and considered in rendering this 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.

On July 24, 2007, a Form I-130 was filed on the applicant's behalf by her spouse. At Part C, number 7, the applicant's spouse indicates that the applicant has used the name, "[REDACTED]" At Part C, number 14, the applicant's spouse indicates that the applicant entered the United States on January 22, 1994 as a visitor authorized to remain until June 21, 1994. In a supplemental letter attached to the Form I-130, the applicant's spouse writes that while the applicant did not keep the

documents she used to enter the United States, she had presented a Laisser-Passe travel document issued to her sister, [REDACTED]. In a detailed affidavit dated September 18, 2011, the applicant states that her father bought her airline ticket and her cousin drove her to the Abidjan airport where she boarded an Air Africa flight to JFK international airport in New York. She writes that there, on January 22, 1994, she entered and was admitted to the United States after being inspected by an immigration officer by presenting a Laisse Passe travel document in the name of her sister, [REDACTED]. The applicant describes the young man whom she sat beside on the plane, provides his name, and explains that he too was from the Ivory Coast and they conversed throughout the flight and exchanged telephone numbers. The applicant states that she was picked up from the airport by her cousin, [REDACTED], and taken to his family's home in Brooklyn. When she learned that another cousin, [REDACTED], was leaving for the Ivory Coast at the end of January 1994, the applicant asked he return the Laisse Passe to her family there. The applicant explains that she was 17 years old then and unfamiliar with immigration laws in the United States.

The applicant indicates that more than a decade after her entry, after marrying her spouse in May 2005 and subsequently consulting an attorney concerning her immigration status, she was advised to file a Form I-102, Application for Initial/Replacement I-94 Arrival Document, which she did. In a letter dated January 1, 2011, the Nebraska Service Center Director denied the application because: "USCIS records indicate that you departed the United States on January 29, 1994. At the time you departed the United States your nonimmigrant status automatically terminated. Therefore you are no longer eligible for a replacement Form I-94 Nonimmigrant Arrival-Departure Record."

On appeal, the applicant supplements the record with a letter from her sister, [REDACTED], who further explains that in 1994, her father decided to send her to visit the United States with a group of students, but she was afraid of air travel and declined. Since the applicant's father had already paid the trip organizer, who had begun the travel document arrangements, the applicant, less than two years older than [REDACTED] was chosen to take her place. [REDACTED] indicates that the applicant went to the embassy for the visa interview and while her photos were substituted on the travel documents, they still bore [REDACTED] name and date of birth. Counsel notes that while immigration records clearly show that someone used a Laisse Passe, return ticket and I-94 issued in the name [REDACTED] to depart the United States roughly one week after the applicant's entry, they do not show who actually departed. The applicant states that she never saw these items after giving them to her cousin for return to her family in the Ivory Coast. She writes that it is entirely possible that her cousin sold these items to someone else as they appear to have been used around the time of his own return there.

Counsel avers that given the financial costs of a trip to the United States from the Ivory Coast, even in 1994, it is highly unlikely that anyone would return after only one week. Counsel adds that consideration should be given the fact that the applicant was only 17 years of age when she entered and the enhanced post-September 2001 safeguards and scrutiny had not yet been implemented, and thus it would not have been unusual for her to have easily entered with a group of students as she has consistently testified throughout her immigration proceedings. Counsel indicates that while the burden is on the applicant to establish that she is eligible for the benefit sought, the standard of proof is a "preponderance of the evidence," or that the manner of the

applicant's entry into the United States is more likely than not to have been as she claims. The AAO agrees and finds that the applicant's consistent statements concerning the manner of her entry, beginning with the Form I-130 petition and forward throughout the present appeal, in addition to the testimony by her sister who's Laissez Passe travel document she presented as her own, and her attempt to obtain a copy of the original I-94 card, provide sufficient evidence that on January 22, 1994, the applicant entered the United States and was admitted as a B-2 nonimmigrant temporary visitor by presenting a Laissez Passe travel document bearing the identity of another individual. Based on the foregoing, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). She requires a waiver under section 212(i) of the Act.

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 or her children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is his only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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., *Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant’s spouse is a 40-year-old native of the Ivory Coast and citizen of the United States who asserts extreme hardship of a mental and physical nature. He writes that before meeting the applicant in 2003, he was living the lonely life of a refugee, having fled persecution in the Ivory Coast in 1995. The applicant’s spouse indicates that he and the applicant have two children together and he also raises her daughter from a prior marriage as his own. He states that the applicant is the only family he has in the United States and he cannot have a decent life without her as she picks up their children from school, cooks, and performs all the domestic chores while he works 12 hours per day in his own towing business. The possibility of hiring someone to care for the children, ages 13, 8 and 6, while the applicant’s spouse is working has not been addressed in the record, nor has any alternative childcare arrangements. Tax and business-related documents show that the applicant’s spouse is the proprietor of [REDACTED] and previously owned an electrician business. The applicant indicates on Form G-325A, Biographic Information, that while she was a hairdresser and co-owner of [REDACTED] from 2006 to 2010, she has been unemployed since 2010. The applicant does not address whether/why she sold her business or ceased working as a hairdresser and no income information for the applicant or documentation has been submitted for the record. Moreover, the record contains no budget or other documentary evidence delineating the family’s current expenses from which an accurate determination might be made as to whether the applicant’s spouse would suffer economic hardship in the applicant’s absence.

The applicant's spouse avers that the applicant's immigration status has affected his mental and physical condition and has resulted in hospitalization twice for stress and anxiety. Medical records show that while the applicant's spouse was hospitalized once for panic disorder without agoraphobia and discharged the same day with a prescription for Xanax, this event occurred on February 28, 2009, more than 2 ½ years before the applicant's applications for a waiver. The clinical documents show that the applicant's spouse had no prior episodes but reported having recently started a new job which placed him under stress. More recent medical records include a January 31, 2011 office visit for chest pain and being unable to sleep, and a February 11, 2011 office visit for cough and congestion. With regard to the former, the applicant's spouse reported going through problems at home, feeling stressed, having felt a bit depressed but not so much anymore, and being on edge waiting for the immigration office to clear his wife. [REDACTED] diagnosed the applicant with anxiety state, unspecified, and prescribed Trazodone. There is no indication that the applicant's spouse was hospitalized in relation to this visit or was ever hospitalized except on February 28, 2009. [REDACTED] writes that on August 17, 2011, he evaluated the applicant's spouse at the request of his attorney. [REDACTED] states that the applicant's spouse qualifies for a diagnosis of major depressive disorder as well as generalized anxiety disorder, both directly related to the possibility of the applicant being required to return to the Ivory Coast. [REDACTED] explains that the applicant's spouse's depression is situational and likely to get better if the applicant is allowed to remain in the United States. He asserts that if the applicant is removed, her children will miss her and her spouse will be unable to adequately care for them because of the long hours he works. The AAO notes that [REDACTED] evaluation appears to be based on self-reporting by the applicant's spouse during a single interview initiated at the request of his attorney, that despite his stated concerns [REDACTED] does not recommend therapy, medication or any form of treatment to help alleviate the applicant's spouse's symptoms, and instead concludes that the condition is temporary and will cease if the applicant is permitted to remain in the United States with him. Nevertheless, the AAO has considered [REDACTED] evaluation along with all other hardship-related factors in the aggregate.

The AAO acknowledges that separation from the applicant would cause various difficulties for the applicant's spouse. However, we find the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant's spouse indicates that he fled the Ivory Coast in 1995 as a result of persecution and has resided in the United States ever since. He states that he and his children cannot move to the Ivory Coast which lacks security, where his life would be in danger (as evidenced by his asylum proceedings), and where his daughters would be in danger of female genital mutilation (FGM). He indicates that his parents and the applicant's parents have asked that the girls be sent to Africa to undergo FGM. He is also concerned that his children hardly understand French and thus their academic progress will suffer. The applicant's spouse writes that relocation would result in the loss of his business in the United States and the income it provides, leaving him unemployed and unable to provide for his family. He states that the Ivory Coast lacks adequate medical facilities and services and he will be unable to pay his and his family's medical costs without health insurance. Country conditions documents submitted for the record confirm

that post-election violence in 2011 took a toll on the Ivory's Coast's medical system, with hospitals running out of bed space and access to health care difficult. The applicant's spouse fears that such circumstances would have dire effects on his mental and physical condition. [REDACTED] speculates that the applicant's spouse "would suffer flashbacks of being almost arrested and jailed for his affiliation with the student organization speaking out against the government," in the event of relocation, thus increasing his anxiety. [REDACTED] presumes further that "there will not be any kind of work for him in Africa and he will be unemployed and even more unhappy and depressed." While several country conditions-related documents have been submitted for the record, none address employment in the Ivory Coast or the country's economy. 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)). Nor does the record identify any group or individuals still active in the Ivory Coast who would seek to harm the applicant nearly 20 years after his days as a student protestor. With regard to the present political conditions in the Ivory Coast, the AAO has reviewed the country conditions documents submitted for the record as well as the U.S. State Department's current Travel Warning for the Cote d'Ivoire, dated May 16, 2013. Therein U.S. citizens are warned that although the security situation significantly improved in 2013, security conditions can change quickly and without warning.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including readjusting to a country in which he has not resided since 1995 and from which he fled persecution; his lengthy residence in the United States of approximately 18 years; his close family ties to his three young children, two of them girls whom he fears would be subjected to FGM in the Ivory Coast; the inherent difficulties of relocating abroad with three young children to a country and culture very different than the only one they have ever known; his business ownership in the United States and loss of income therefrom; his stated safety-related and medical and mental health-related concerns about the Ivory Coast and the exacerbation of his current anxiety; and asserted economic, employment, and educational concerns. Considered in the aggregate, the AAO finds the evidence sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to the Ivory Coast to be with her.

Although the applicant has demonstrated that her qualifying relative spouse would experience extreme hardship were he to relocate to the Ivory Coast to join her, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to a qualifying relative in this case. Accordingly, the applicant has not established that he is statutorily eligible for a waiver under section 212(i) of the Act.

(b)(6)

NON-PRECEDENT DECISION

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In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.