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U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

FILE Office: BALTIMORE, MD Date: FEB 06 2004

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:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director for Services, Baltimore, Maryland 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 having sought to procure admission into the United States by fraud or willful misrepresentation on May 5, 1997. The applicant married a naturalized U.S. citizen on April 30, 1998 and is the beneficiary of an approved Petition for Alien Relative, Form I-130 (EAC-99-185-54018). 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 with her U.S. citizen spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the Acting District Director, dated March 6, 2003.*

On appeal, counsel states that the Immigration and Naturalization Service [now Citizenship and Immigration Services] erred as a matter of law in not affording the applicant an opportunity to appear to present additional evidence in support of her application. Counsel also asserts that CIS erred as a matter of fact in denying the application as the applicant and her family stand to suffer extreme hardship if the waiver application is denied. On May 28, 2003, counsel requested an extension of time in order to gather information and documentation in support of the appeal. On June 30, 2003, counsel submitted a brief and supporting materials.

The record includes copies of the U.S. birth certificates for the applicant's two children; a copy of the marriage certificate for the applicant and her spouse; a copy of the applicant's birth certificate including translation; a copy of the U.S. naturalization certificate for the applicant's spouse; copies of financial documents and income tax returns for the couple; a copy of the deed for property owned by the couple; a letter from Bank of America confirming the couple's joint bank accounts; affidavits of support; copies of photographs of the applicant and her family and copies of the social security cards for the applicant's spouse and child. The entire record was considered in rendering this decision.

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.

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 irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of 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.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of the applicant's departure from the United States as he is a successful entrepreneur who works long days and is unable to care for his two sons as a result. *See Letter signed by Irene M. Recio, dated June 30, 2003.* The record does not establish that the applicant is the only person able to provide care to her children while the applicant's husband is working. Counsel further asserts that the applicant provides financial support to the household amounting to $100 per week. *Id.* The record does not establish this source of income. Even if the applicant does earn the amount indicated by counsel, the record reveals that the applicant's husband earns the vast majority of the family income. *See Individual Income Tax Return of Abu Barry for 1999.* The record does not establish that the

loss of $100 per week would constitute extreme hardship to the applicant's spouse.

Counsel asserts hardship to the applicant's husband if the applicant departs the United States with their children. While counsel indicates that the applicant and her children would suffer living in the West African region because it is conflict ridden and dangerous, the AAO notes that any potential hardship to the applicant herself and to her children is not considered in an application for waiver pursuant to section 212(i) of the Act. Counsel states that it would be difficult for the applicant's husband to raise his children in the United States without the assistance of the applicant. The record does not contain documentation supporting these claims beyond the statements of counsel and the applicant.

U.S. court decisions have repeatedly 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, *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. *Hassan v. INS, supra*, held further 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. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from his wife. However, his situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 she 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 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.