

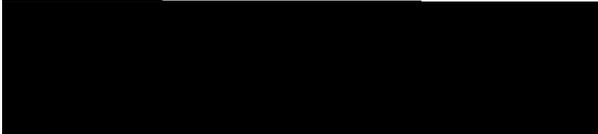
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U.S. Citizenship
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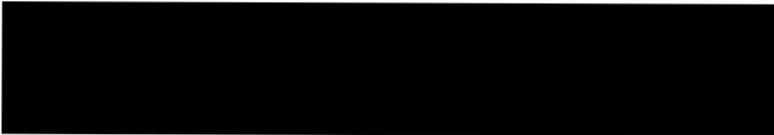
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FILE: Office: CHICAGO, IL Date: **OCT 24 2008**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, IL, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States (U.S.) 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 procured admission into the United States by fraud or willful misrepresentation on October 5, 1996. The applicant is married to a U.S. citizen and has two U.S. citizen children. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant's spouse's claims were based on medical and economic detriment and did not rise to the level of extreme hardship. The application was denied accordingly. *Decision of the District Director*, dated November 24, 2004.

On appeal, counsel states that the director failed to consider that the applicant's spouse would suffer extreme hardship if the family was forced to relocate to Nigeria and misapplied the extreme hardship standard as stated in *Matter of Cervantes-Gonzales*, 22 I&N Dec. 560 (BIA 1999). *Form I-290B*, dated December 23, 2004.

The record indicates that on August 25, 2004, during the applicant's adjustment interview, the applicant signed a sworn statement stating that he entered the United States by presenting a fraudulent British passport to an immigration officer on October 5, 1996. Having made a misrepresentation to procure admission to the United States, the applicant is subject to the ground of inadmissibility under section 212(a)(6)(C)(i) of the Act and the waiver for this ground of inadmissibility under section 212(i) of the Act.

The record also indicates that the applicant was arrested for soliciting a prostitute on November 30, 1999. The applicant's spouse states in her affidavit that the applicant pled guilty to the charge and was ordered to complete three months probation. The AAO notes that soliciting a prostitute is a crime involving moral turpitude. Having committed a crime involving moral turpitude, the applicant is subject to the ground of inadmissibility under section 212(a)(i)(A)(i)(I) of the Act and the waiver for this ground of inadmissibility under section 212(h) of the Act. In section 212(h) waiver proceedings U.S. citizen children are considered qualifying relatives. In section 212(i) waiver proceedings U.S. citizen children are not considered qualifying relatives, making the section 212(i) waiver proceedings in the applicant's case more restrictive. The AAO notes that the applicant's waiver application will be reviewed under the more restrictive section 212(i) waiver proceedings thereby overcoming both section 212(h) and section 212(i) waiver proceedings requirements.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship the alien himself experiences or his children experience due to separation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to 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).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Nigeria or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Nigeria. The applicant's spouse states in her affidavit that she will suffer extreme hardship as a result of relocating to Nigeria. In support of her assertions the applicant submitted six country reports on

Nigeria. These country reports depict Nigeria as an extremely poor country with high infection rates of HIV; poor educational and medical facilities; and high infant and maternal mortality rates. The State Department's Consular Information Sheet for Nigeria, updated on January 18, 2005 states that Americans in Nigeria have experienced muggings, assaults, burglary, kidnappings and extortion. The 2003 State Department Report for Nigeria states that customary and religious discrimination against women persisted in Nigerian society including government tolerance of practices that adversely affected women with regards to women's access to employment, promotion to higher professional positions, and salary inequality. In addition, the applicant's spouse's doctor, [REDACTED] stated in his letter dated September 15, 2004 that he strongly advised the applicant's spouse not to relocate to Nigeria as her medical care would suffer. Furthermore, the applicant's spouse was born and raised in the United States, her entire family resides in the United States and her children were born and are being raised in the United States. Therefore, because of the extreme poverty, lack of medical facilities and discrimination against women in Nigeria as well as the family separation the applicant's spouse would suffer as a result of relocating to Nigeria, the AAO finds that the record does reflect that relocation will result in extreme hardship to the applicant's spouse.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant's spouse states that she will suffer emotionally and financially if the applicant is removed from the United States. The applicant's spouse states in her affidavit that the applicant is the primary caregiver for their two children. The applicant's spouse works full time while the applicant provides for all of the children's needs. The applicant's spouse states she will not be able to afford childcare if the applicant is removed from the United States. The applicant's spouse also states that her family would not be able to help her with her expenses and childcare. Her mother is her only living parent and resides in Providence, RI. Her mother works full-time and her only sibling is 25 years old and lives with her mother. The applicant also states that she has a history of anxiety and depression. She states that before she suffered a miscarriage in 2004 she had been receiving treatment for anxiety and depression from her family doctor, [REDACTED]. After the miscarriage, she states that her condition worsened and she received treatment from a psychiatrist, [REDACTED]. She is currently taking an anti-depressant medication. To support her assertions regarding her medical treatment the applicant's spouse submitted a letter from [REDACTED] dated September 15, 2004, which states that the applicant's spouse has been under his care for severe depression for the past year and takes medication on a regular basis. He states that the applicant's spouse needs the applicant's support to be functional in society. The AAO finds that based on the applicant's history of treatment for anxiety and depression, her dependence on the applicant for caring for their children and running their household as well as the applicant's lack of outside familial support, separation from the applicant would cause the applicant's spouse extreme hardship.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case are the fraud for which the applicant seeks a waiver and the applicant's criminal conviction for soliciting a prostitute in 1999. The favorable and mitigating factors in the present case are the extreme hardship suffered by the applicant's spouse, the presence of two U.S. citizen children, and the absence of any criminal record since the 1999 incident and the applicant's apparent rehabilitation through marriage counseling as mentioned in the spouse's affidavit.

The AAO finds that, although the immigration violation and criminal act committed by the applicant were serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.