



U.S. Department of Justice
Immigration and Naturalization Service

H1

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[REDACTED]

File: [REDACTED] Office: BALTIMORE, MD

Date: JAN 31 2001

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)

IN BEHALF OF APPLICANT:

[REDACTED]

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identification data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

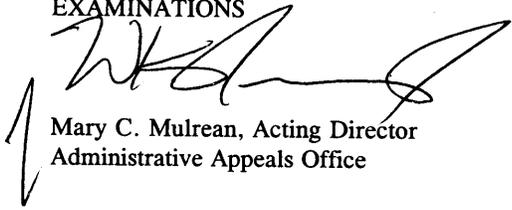
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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 which 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 the Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States under § 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 a benefit under the Act by fraud or willful misrepresentation in September 1997. The applicant is married to a United States citizen and seeks the above waiver in order to remain in the United States with his spouse. A petition for alien relative submitted by the applicant's spouse on his behalf remains unadjudicated in the record.

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.

On appeal, counsel states that the Service erred in denying the application by failing to consider relevant factors in the aggregate in determining the existence of extreme hardship. Counsel asserts that the applicant's spouse would be deprived of the applicant's assistance in her business and in caring for her back pain, and that the applicant could not earn the same amount of money if he were removed from the United States.

On appeal, counsel also states that a brief and/or evidence will be forthcoming within 30 days of filing the appeal. Since more than nine months have passed and no new information or documentation has been received, a decision will be rendered based on the present record.

The record reflects that the applicant appeared for an interview before a Service officer in connection with his application for adjustment of status to permanent residence in September 1997. At that time, he submitted his alleged original birth certificate. The birth certificate was subsequently forwarded by the Service to the Anti-Fraud Unit at the American Embassy in Lagos, Nigeria where it was confirmed as a fraudulent document. The applicant was found inadmissible under § 212(a)(6)(c)(i) of the Act and issued a notice of intent to deny his application for adjustment of status for failure to submit an application for waiver of inadmissibility.

In response to the Service's notice of intent to deny, the applicant failed to submit an application for waiver of inadmissibility and his application for adjustment of status to permanent residence was denied. The applicant then filed a motion to reopen the denial of his adjustment application along with the instant application for waiver of grounds of inadmissibility.

The applicant was given an opportunity to, but failed to provide, independent objective evidence to resolve inconsistencies regarding his submission of a fraudulent document. He was also give an opportunity to rebut the derogatory information in the record and to submit any additional evidence in support of his application. The applicant failed to respond and his application for a waiver of inadmissibility was denied.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

(C) MISREPRESENTATION.-

(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.

Section 212(i) ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, 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 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.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 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. Although extreme hardship is a requirement for § 212(i) relief, once established, it is but one favorable discretionary factor to be considered. See Matter of Mendez, 21 I&N Dec. 296 (BIA 1996).

In Matter of Cervantes-Gonzalez, Interim Decision 3380 (BIA 1999), the Board of Immigration Appeals (BIA) stipulated that the factors

deemed relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of the Act include, but are not limited to, the following: 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 finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

In Matter of Cervantes-Gonzalez, the Board also held that the underlying fraud or misrepresentation may be considered as an adverse factor in adjudicating a § 212(i) waiver application in the exercise of discretion. Matter of Tijam, Interim Decision 3372 (BIA 1998), followed. The Board declined to follow the policy set forth by the Commissioner in Matter of Alonso, 17 I&N Dec. 292 (Comm. 1979); Matter of Da Silva, 17 I&N Dec. 288 (Comm. 1979), and noted that the United States Supreme Court ruled in INS v. Yueh-Shaio Yang, 519 U.S. 26 (1996), that the Attorney General has the authority to consider any and all negative factors, including the respondent's initial fraud.

In Perez v. INS, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. The common results of deportation are insufficient to prove extreme hardship.

The court held in INS v. Jong Ha Wang, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record includes an affidavit from the applicant's spouse. She states that she would suffer emotional hardship if the applicant were removed from the United States. She also states that she would suffer financial hardship because the applicant is a partner with her in a small business and she would be unable to hire anyone to replace the applicant. Finally, the applicant's spouse indicates that her husband is the only person to care for her when she suffers episodes of severe back pain. No documentation or evidence to support the spouse's assertions of emotional and financial hardship have been submitted. In addition, no documentation or evidence as to the specific nature and extent of the spouse's medical problem or the diagnosis or prognosis of her condition has been submitted.

A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship to the applicant's spouse (the only qualifying relative) caused by



separation that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to travel to the United States to reside at this time. 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 § 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.