



U.S. Citizenship
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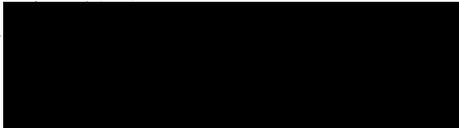
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IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(h)

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) 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 section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the spouse of a United States citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his 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 that the applicant demonstrated historical disregard for the immigration laws of the United States. The district director denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 26, 2003.

On appeal, counsel states that Citizenship and Immigration Services erred in finding that the applicant's family would not suffer extreme hardship and that the applicant's noncompliance with immigration laws is a total bar for his application. *Appeal of Denial of Application for Waiver of Grounds of Excludability*, dated December 23, 2003. The entire record was reviewed and considered in rendering a decision on the applicant's appeal.

The record reflects that on July 10, 1992, the applicant was convicted of credit card fraud in the United States District Court for the District of New Jersey.

Section 212(a)(2)(A) of the Act states in pertinent part:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

....

(1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings

under section 212(h) of the Act. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems 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 asserts that the applicant's spouse would suffer hardship as a result of relocation to Nigeria in order to remain with the applicant. Counsel states that the applicant's spouse has resided in the United States for her entire life and that her family members also reside in the United States. Counsel indicates that the mother of the applicant's spouse resides with the applicant and his spouse and suffers from a life long battle with schizophrenia. *Appeal of Denial of Application for Waiver of Grounds of Excludability* at 7. Counsel further contends that the applicant's spouse has never been to Nigeria and possesses no language skills for use in the applicant's home country. *Id.* Counsel asserts that the applicant's spouse would therefore be unable to find employment in Nigeria and would suffer as a result of known human rights violations against women that occur in that country. *Id.*

The record fails to establish that the applicant's spouse would suffer extreme hardship if she remains in the United States in order to maintain employment, proximity to her ailing mother and residence in a "civilized country" as counsel terms the United States. *Id.* Counsel contends that the applicant's spouse would suffer extreme financial hardship as a result of separation from the applicant. *Id.* at 8. Counsel indicates that the applicant's spouse will be unable to pay the mortgage and support herself, her children and pay the bills on her income alone. *Id.* at 9. The record demonstrates that the applicant earns over \$80,000 per year while the applicant's spouse earns approximately \$30,000. *Id.* Although the applicant's spouse may not be able to maintain residence in her current home in the absence of the applicant, the record fails to establish that she is dependent on the income earned by the applicant to subsist. Moreover, the record fails to establish that the applicant will be unable to financially contribute to his family from a location outside of the United States. The AAO notes that the applicant's sister also resides with the applicant and his spouse; the record fails to demonstrate that the applicant's sister is unable to financially contribute to the costs associated with maintaining ownership of the family's residence. *Id.* at 10.

The AAO acknowledges counsel's assertion that the applicant's spouse suffers from depression and requires "constant medical attention" as a result of her conditions. *Id.* at 6. In support of this assertion, the record contains a report from a licensed psychologist who interviewed the applicant's spouse and children. *Affidavit of Stephen Reich, PhD*, dated October 31, 2002. The evaluating psychologist determined that the applicant's spouse was suffering a major depressive reaction to the applicant's immigration situation and noted that she was being treated with antidepressant medication. *Id.* at 5. While the emotional and psychological impact of the applicant's inadmissibility on the applicant's spouse is regrettable, the AAO is unable to make a

determination of extreme psychological hardship imposed on the applicant's spouse based on an isolated meeting with a medical health professional. Although counsel contends that the applicant's spouse requires "constant medical attention", the record fails to evidence an ongoing relationship between the applicant's spouse and a medical health professional. The AAO recognizes counsel's submission of a statement from a physician of internal medicine and oncology who treats that applicant's spouse, however, the record fails to explain the relationship between care provided by the writing physician, who specializes in cancer, and the depression suffered by the applicant's spouse. *Letter from Yvonne M. Li, MD*, dated November 19, 2002. Moreover, the record fails to indicate whether or not the antidepressant medication prescribed to the applicant's spouse is effective in counteracting the effects of her depression.

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 spouse and children will likely endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, 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 and/or children 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(h) 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.