

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

HL

FILE:

[REDACTED]

Office: BALTIMORE, MD

Date: DEC 16 2005

IN RE:

[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:

[REDACTED]

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, 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 Nigeria who was found to be 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 having procured a visa for admission to the United States through fraud or willful misrepresentation. The applicant is the spouse of a citizen of the United States and the beneficiary of an approved Petition for Alien Relative (Form I-130). He 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 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 denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated March 15, 2004.

On appeal, counsel asserts that the decision of the district director was in error and that the record demonstrates extreme hardship to the applicant's spouse. *Form I-290B*, dated March 31, 2004. In support of this assertion, counsel submits a brief, dated April 30, 2003. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant procured a visa for admission to the United States through fraud or willful misrepresentation during November 1997 by falsely claiming to be the son of His Royal Highness [REDACTED] from Ogun State, Nigeria.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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:

- (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 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (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 states that the applicant's spouse would experience hardship as a result of relocation to Nigeria in order to remain with the applicant because the United States Department of State has issued travel warnings to United States citizens of the dangers of travel to the applicant's native country. *Brief for Applicant*, dated April 30, 2003. Counsel indicates that there are violent crimes, religious tensions, security problems and terrorist threats present in Nigeria. *Id.*

The record fails to establish extreme hardship imposed on the applicant's spouse if she remains in the United States in the absence of the applicant in order to maintain residence in a safe environment. Counsel contends that the applicant's spouse would suffer financial hardship in the absence of the applicant. Counsel states that the applicant's spouse earns an income that is barely enough to support her, her two children from previous relationships and her two children parented by the applicant. *Id.* The record fails to establish that the applicant will be unable to contribute to the subsistence of his spouse and children from a location outside of the United States. In addition, the record fails to establish whether or not the fathers of the two other children of the applicant's spouse contribute to their financial situation. Moreover, the AAO notes that the U.S. Supreme 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.

Counsel also contends that the applicant's spouse would suffer emotional hardship in the absence of the applicant. Counsel refers to a previously submitted psychological evaluation to support the proposition that the applicant's spouse would suffer intense exacerbation of her symptoms of depression and anxiety impacting her functioning at work and home if the applicant's Form I-601 waiver were denied. *Id.* The submitted psychological evaluation concludes that the applicant's spouse experiences symptoms of distress "related to both long-standing personality dysfunction and to the impact of her current life situation and recent events." *Psychological Evaluation by* [REDACTED] dated February 10, 2004. The AAO notes that although many of the symptoms identified by the evaluating psychologist are long-standing, the record fails to reflect a history of any mental health treatment sought by the applicant's spouse. *Id.* at 3. Furthermore, the record fails to reflect an ongoing relationship between the applicant's spouse and a mental health professional beyond the five hours spent with the evaluating psychologist. *Id.* at 2. The evaluation constitutes the only evidence of psychological hardship offered by the record and the AAO is unable to make a determination of extreme hardship based solely on its contents.

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* 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 would endure hardship as a result of separation from the applicant. However, her situation, based on the record, 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 he 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.