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U.S. Citizenship
and Immigration
Services

H2

[Redacted]

FILE:

[Redacted]

Office: CHERRY HILL, NJ

Date: DEC 28 2005

IN RE:

[Redacted]

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:

[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.

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Cherry Hill, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States pursuant to 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 crimes involving moral turpitude (fraudulent use of credit cards and theft by deception). The record indicates that the applicant has a U.S. citizen spouse, child and stepchild. The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The district director concluded that the applicant's Application for Waiver of Grounds of Excludability does not warrant a favorable exercise of discretion as the gravity of the applicant's convictions and violation of immigration laws outweighs prospective hardships his family may face upon his departure. *Decision of the District Director*, dated January 16, 2005.

On appeal, counsel asserts that the applicant demonstrated the extreme hardship his family would suffer if he were forced to leave the country and that the district director failed to follow precedent legal requirements for granting of a waiver. *See Form I-290B*, dated February 11, 2005. The AAO notes that counsel requested 30 days to submit additional documentation. However, this material was not received by the AAO within the allotted time and the AAO subsequently requested these documents to no avail.

The record contains counsel's letters, a psychological evaluation for the applicant's family, medical records for the applicant's spouse and son, affidavits from the applicant and her spouse, school records for the children, utility bills and country information on Nigeria. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

(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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

(h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (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.

The AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. The AAO notes that the district director failed to make a determination on the issue of extreme hardship before applying the discretionary phase of the case. However, the AAO disagrees with counsel's contention that the past conviction cannot be considered in the discretionary phase. See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) the Board of Immigration Appeals (BIA) provided a list of factors it deems relevant in determining whether an alien has established extreme hardship. These factors included, but are not limited to, the presence of lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to one of the qualifying relatives must be established in the event that they relocate to Nigeria or in the event that they remain in the United States, as they are not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to Nigeria. Counsel states that the applicant's spouse and children were born in the United States, have lived all of their lives in the United States and have no family in Nigeria other than the applicant's mother and siblings. *Attorney Letter*, at 3, dated February 12, 2003. The applicant's spouse states that neither she nor the children speak the native language, Yoruba. *Affidavit of Applicant's Spouse*, at 3, dated January 31, 2003. Information on country conditions is cited by counsel which indicates the drastic poverty, low life expectancy and lack of health care in Nigeria. *Attorney Letter*, at 3-4. Counsel states that the applicant's spouse suffers from health problems including glaucoma, asthma, a cataract, high blood pressure and two cysts which could not be treated in Nigeria. *Second Attorney Letter*, at 2-3, dated October 20, 2003. The AAO notes that the severity of these conditions is unclear from the record other than statements by the applicant's spouse and counsel that the conditions are serious. Counsel states that the applicant's son has high cholesterol which could cause cardiological damage if treated incorrectly. *Id.* at 2. Though the record contains medical records, there are no letters or other correspondence from physicians indicating the severity of the conditions or what treatment is required. However, considering all of the factors in totality, the AAO finds that the applicant's qualifying relatives would suffer extreme hardship if they relocated to Nigeria.

The second part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event that they remain in the United States. Counsel states that the applicant and her spouse have been living together for almost 10 years and they are raising their children together. *Id.* at 1-2. Counsel cites the

psychological evaluation which states that the applicant's spouse is suffering from a major depressive reaction caused by fear of the applicant's removal to Nigeria. *Id.* at 2. Counsel states the applicant's spouse would be unable to support herself and her two children and the stress would exacerbate her high blood pressure, asthma and depression. *Id.* Counsel also cites the psychological evaluation which states that the applicant's son would be at risk for development of symptoms of depression and anxiety and the applicant's stepdaughter's world would shatter in the event of separation from the applicant. *Id.* The AAO notes that the psychological evaluation is based on a one-time meeting and there is no indication of any follow-up or proposed treatment or therapy for any of the qualifying relatives. Therefore, it is given little weight in this decision.

The record includes pharmacy records for the applicant's spouse, however, there is no probative evidence that she has any serious medical problems that would be exacerbated by the applicant's departure. Counsel states that the children are dependent on the applicant for support. The applicant's spouse states that the applicant earns \$3,800 per month and she earns \$1,360 per month, therefore, they would be reduced to poverty without the applicant's income. *Affidavit of Applicant's Spouse*, at 2. The applicant's spouse provides a listing of total expenses versus total monthly income. *Id.* With the exception of a few bills and a paystub with no name listed, there is no evidence to verify that the qualifying relatives will face severe financial hardship. Therefore, based on the evidence presented, the record does not show that a qualifying relative will suffer extreme hardship by remaining in the United States.

U.S. court decisions have 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.

Moreover, the U.S. Supreme Court additionally 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 AAO notes that a review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative 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. 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.