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U.S. Citizenship
and Immigration
Services

HA2

FEB 22 2005

FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date:

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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, 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 by a consular officer 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 citizen of the United States 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 stepchildren.

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 November 21, 2003.

On appeal, counsel contends that the denial was in error because the affidavit of the applicant's spouse articulated sufficient facts to meet the extreme hardship requirement. *Form I-290B*, dated December 2, 2003.

In support of these assertions, counsel submits a brief and a letter from a clinical psychologist, dated February 23, 2004. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on February 6, 1997, the applicant was convicted of Receiving/Concealing Stolen Property and sentenced to 16 months in state prison.

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 contends that the applicant's spouse would suffer extreme hardship as a result of the denial of the applicant's waiver of his grounds of inadmissibility. Counsel states that the applicant's spouse fears that she would be unable to find employment if she accompanied the applicant to Nigeria. *Brief in Support of Respondent's Appeal to the District Director's Decision*, dated February 25, 2004. The applicant's spouse is also concerned by the language barrier and cultural differences that she and her children would encounter in Nigeria. *Letter from Olujimi O. Bamgbose, PhD*, dated February 23, 2004.

Counsel further asserts that the applicant and his spouse operate a business in the United States that the applicant's spouse fears she will lose in the absence of the applicant. *Brief in Support of Respondent's Appeal to the District Director's Decision* at 3. The record reflects that the applicant and his spouse have a third partner in their business. See *Articles of Incorporation of American Nurses Provider Inc.*, dated September 3, 2003. The record fails to establish that the applicant's spouse and the couple's partner will be unable to manage the business in the absence of the applicant. Further, the record does not establish that the applicant and his spouse are unable to sell the business, if necessary, in order for the applicant's spouse to obtain alternative employment with which she feels more comfortable.

Counsel submits a psychological evaluation for the applicant and his spouse. The evaluating psychologist indicates that the report constitutes findings based on one meeting with the couple. *Letter from Olujimi O. Bamgbose, PhD*, dated February 23, 2004. The letter quotes heavily from statements made by the applicant and his spouse to the psychologist and concludes that the couple should undergo psychotherapy to alleviate anxiety and depression as well as seek an evaluation for their children. *Id.* The AAO notes that the record does not contain additional information pertaining to these recommendations made by the evaluating psychologist including whether or not the applicant and his spouse acted on them. The submitted evaluation standing alone does not form the basis for a finding of extreme emotional hardship imposed on the applicant's spouse by the applicant's inadmissibility to the United States. Rather, the report reflects the type of hardship that families typically encounter when faced with separation.

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. Moreover, 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. The AAO recognizes that the applicant's spouse and stepchildren will likely endure hardship as a result of separation from the applicant. However, their 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 and stepchildren 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.