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FILE: [REDACTED] Office: LOS ANGELES, CALIFORNIA

Date: FEB 24 2005

IN RE: [REDACTED]

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

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, 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 to be inadmissible to the United States under 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 entry into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse.

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. On appeal, counsel contends that the applicant's husband will suffer extreme hardship whether he chooses to accompany the applicant to Nigeria or remain in the United States.

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

- (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 that:

- (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.

The record reflects that the applicant made a willful misrepresentation of a material fact by using a passport in another person's name in order to obtain entry into the United States in July 2000. 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 herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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 (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to § 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.

In her appeal brief, counsel writes, "None of [the applicant's husband's] factors are "common," as he is not a Nigerian facing the same situation as any other Nigerian returning to Nigeria." It is important to consider that, when determining extreme hardship, the U.S. citizen or lawful permanent resident spouse's situation is not compared to that of an alien returning to his or her own country, as counsel appear to imply. The applicant's husband's situation is compared to that of similarly situated U.S. citizen spouses, who usually experience emotional suffering and difficult choices, amongst other problems, when faced with the removal of their spouse.

Counsel contends that the applicant's husband would suffer extreme psychological hardship as a result of relocating to Nigeria to remain with the applicant, as his friends and family live in the United States and he has no ties with Nigeria, other than the applicant. Counsel asserts that the applicant's spouse would be subject to religious and ethnic discrimination and common crime in Nigeria, and that he would be unable to find employment in his profession. Counsel maintains that the applicant's husband will suffer emotional hardship if he remains in the United States, separated from the applicant. Counsel also states that if the applicant is removed to Nigeria, she will be unable to procure adequate medical treatment for her uterine fibroids, which can cause infertility.

On appeal, counsel submits a psychological report prepared by Aimee G. Ellicott, Ph.D. Dr. Ellicott conducted a single interview of undetermined duration with the applicant's husband on June 2, 2004, and based on that visit, she wrote that if the applicant's husband relocates to Nigeria, "it is extremely likely that [the applicant's husband] would suffer a clinical depression due to his career being abruptly and completely terminated." Dr. Ellicott does not indicate how she arrived at this diagnosis. There is no evidence that Dr. Ellicott conducted any therapy prior to or subsequent to her June 2, 2004 interview with the applicant's husband. Dr. Ellicott did not recommend that the applicant's husband seek medical treatment. In sum, Dr. Ellicott's letter does not establish that the applicant's husband will suffer emotional hardship greater than that of other individuals in his situation.

In support of counsel's assertion that the applicant's husband will be unable to work in his profession, television writing, and that he would be in danger of religious or ethnic violence and/or discrimination, counsel submits the U.S. Department of State 2003 Country Report on Human Rights Practices in Nigeria, an excerpt from the annual report of the U.S. Commission on International Religious Freedom from May 2004, several articles about civil unrest, one article regarding problems in the Nigerian television industry, a consular information sheet from June 3, 2004, and a State Department travel warning dated December 29, 2003. This literature indicates that inter-ethnic conflict exists in Nigeria, especially in specific geographic regions. The evidence indicates that there is a high crime and corruption rate in Nigeria, and that some Americans have been victims of street crime. A few Americans have also been threatened and held hostage during labor disputes in the oil-producing region of the Niger River Delta. It is not possible, however, to draw the conclusion from the evidence submitted that the applicant's husband would be a target of ethnic violence because he is a caucasian, Christian American. In fact, as counsel notes, the consular information sheet indicates that there is little anti-American sentiment among Nigerians. From the evidence on the record, it may be concluded that the applicant's husband could become a crime victim, due to the general high rate of

crime in Nigeria. The probability of this happening, however, cannot be predicted, just as it cannot be predicted whether the applicant's husband will become a crime victim in California or anywhere else in the world.

The evidence submitted suggests that the applicant's husband may find it difficult to obtain employment in the Nigerian publicly-run media. His prospects in the private media are undetermined. In any case, the AAO notes that the inability to work in one's chosen profession does not normally constitute extreme hardship. 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 record indicates that the applicant's husband is college educated. There is nothing in the record that establishes that he would be unable to obtain employment in a field other than television writing. There is also nothing to indicate that the applicant would be unable to obtain employment in order to provide finances for the couple.

Counsel states that the applicant will have difficulty obtaining fertility treatments in Nigeria, as evidenced by the submitted letter from the World Health Organization (WHO). A letter from Diane E.B. Peterson, M.D., who consulted with the applicant on one known occasion, states that Dr. Peterson discussed treatment for uterine fibroids with the applicant. The doctor's letter does not state that the applicant requires fertility assistance. Although the WHO letter indicates that fertility assistance may not be readily available in Nigeria, it does not state that treatment for uterine fibroids is unavailable in Nigeria. The letter also states that a few medical institutions and private resources have conducted In-Vitro fertilization and the success is being monitored. The letter does not indicate that fertility treatment is completely unavailable in Nigeria, only that it would be preferable for the applicant and her husband to conclude treatment in the United States. As mentioned above, hardship to the applicant herself is not under consideration in these proceedings. Inasmuch as the record does not establish that the applicant's husband will be unable to become a father due to the applicant's removal to Nigeria, her current medical condition is not shown to cause him extreme hardship.

While counsel states that the applicant's husband would accompany the applicant to Nigeria, there is no law that would force him to do so. The AAO acknowledges that it has been held that "the family and relationship between family members is of paramount importance" and that "separation of family members from one another is a serious matter requiring close and careful scrutiny." *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1423 (9th Cir. 1987) citing *Bastidas v. INS*, 609 F.2d 101 (3rd Cir. 1979). However, it is also noted that 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals 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 husband will endure hardship as a result of separation from the applicant. However, his situation, based on the record, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship. No evidence was submitted to establish hardship to the applicant's husband should he decide to remain in the United States.

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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(a)(6)(C) 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.