

Identifying data deleted to  
prevent clear & unwaranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

HA

MAR 08 2005

FILE:

Office: NEWARK, NEW JERSEY

Date:

IN RE:

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, Newark, New Jersey, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion to reopen will be granted, and the previous decisions will be affirmed.

The applicant is a native and citizen of Nigeria who is married to a naturalized U.S. citizen and is the beneficiary of an approved petition for alien relative. The applicant was found to be inadmissible to the United States under § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure benefits under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her 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. The AAO dismissed the applicant's subsequent appeal and affirmed the director's denial on July 25, 2002. On motion, counsel submits psychological and medical reports for the applicant's husband and medical information about her parents-in-law.

Counsel's submission of additional evidence does not satisfy the requirements of a motion to reconsider. A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Although counsel indicates that the decision to deny the waiver petition was incorrect, he does not supply any pertinent precedent decisions or establish that the director misinterpreted the evidence of record.

A motion to reopen must state the new facts that will be proven if the matter is reopened, and must be supported by affidavits or other documentary evidence. See 8 C.F.R. § 103.5(a)(2). Here, the evidence submitted pertains to previously existing medical and psychological conditions. The proceedings will be reopened in order to consider the effect, if any, of the submitted evidence on the analysis of extreme hardship.

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 claiming Liberian citizenship in her asylum application and in subsequent dealings with the Immigration and Naturalization Service, now CIS. She is not Liberian; she is Nigerian.

A § 212(i) waiver of the bar to admission resulting from violation of § 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 to the alien herself or to her children is irrelevant to § 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.

The district director determined that evidence did not establish that the applicant's husband would undergo extreme hardship should the applicant be removed. On motion, counsel attempts to demonstrate that the applicant's husband is suffering extreme emotional hardship. The evidence submitted on motion pertaining to his parents does not indicate that the applicant's husband would experience extreme hardship in the applicant's absence. Counsel submits a letter written on August 21, 2002 by [REDACTED] M.D., who indicated that the applicant had been under his care since April 2002, that he last saw the applicant in May 2002, and that the applicant was being treated for hypertension and mild depression. [REDACTED] letter does not state that the applicant's husband's condition was expected to worsen, and there is no indication that the applicant's husband's symptoms were not under control at the time the letter was written. [REDACTED] does not mention that the applicant's husband is at risk of committing suicide. Based on [REDACTED] letter, the applicant's husband's symptoms do not rise to the level of extreme hardship.

Counsel also submits a psychological report prepared by [REDACTED] Ph.D., based on a single interview on August 12, 2002. The evidence does not indicate that [REDACTED] ever conducted any therapy with the applicant's husband, nor does the report contain any recommendation that the applicant's husband undergo any psychiatric or medical care related to his depression. According to [REDACTED] as related to him by the applicant's husband never had a history of depression. The majority of [REDACTED] evaluation consists of a report of the facts as provided by the applicant's husband during their one visit. [REDACTED] opinion that "[t]he risk of suicidality in this case is very high if his wife leaves the country" appears to be based on the applicant's husband's affirmative answer to [REDACTED] question regarding whether he had suicidal thoughts. Without any previous therapeutic relationship with the applicant's husband, and absent any

objective indication of suicidal tendencies [REDACTED] conclusion that "[t]he risk of suicide is grave if [the applicant] is forced to leave the country" appears to be unsupported by the evidence. The AAO recognizes that the applicant's husband would endure emotional hardship as a result of separation from the applicant. However, the evidence submitted on motion does not establish that the applicant's husband's symptoms, such as depression, are more severe than those that habitually affect similarly situated individuals

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.

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 previous decisions are affirmed.