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U.S. Department of Homeland Security  
20 Mass. Ave., NW, Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

H12

FILE:

Office: ATLANTA, GA

Date: DEC 29 2006

IN RE:

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:

SELF-REPRESENTED

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Atlanta, Georgia and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of South Africa and a 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 attempted to procure admission 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 reside in the United States with his spouse and U.S. citizen son.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director, dated March 7, 2005.* The AAO notes that the District Director erred in finding that the applicant was eligible for a waiver under section 212(h) of the Act, as the applicant does not have a criminal record. The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act. He is therefore eligible to seek a waiver under section 212(i) of the Act.

On appeal, the applicant contends that Citizenship and Immigration Services (the Service) erred as a matter of law in finding that he failed to meet the burden of establishing extreme hardship to his qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B.*

In support of these assertions the record includes, but is not limited to, a statement from the applicant's spouse; a statement from the applicant; a termination of employment letter, dated January 17, 2005; country condition reports; bank statements for the applicant and his spouse; an employment letter for the applicant; earnings statements for the applicant; and tax statements for the applicant and his spouse. The entire record was reviewed and considered in rendering this decision.

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 was born in South Africa to Nigerian parents. *See birth certificate*. On August 15, 1999 the applicant received an extension of his B1 visa listing his country of citizenship as South African. *Form I-94*. On September 3, 1999 the applicant married a U.S. citizen. *See marriage certificate*. The applicant subsequently adjusted his status to lawful permanent resident on February 5, 2002. *See I-551 stamp in South African passport*. The applicant admitted in his adjustment of status interview that he renounced his South African citizenship because his parents were from Nigeria. *Form I-485 Processing Worksheet*. On March 27, 2002 immigration officials encountered the applicant as he was returning to the United States. *Form G-166C*. The applicant admitted he was a citizen of Nigeria and that in 1998 he obtained a South African passport through fraudulent use of a South African birth certificate. *Id.* The US consulate granted the Applicant a B1/B2 visa in the South African passport at Capetown on May 26, 1998. *Id.*; *See also South African passport*. The applicant entered the United States with this passport and visa on December 17, 1998. *Id.* As previously noted, the applicant extended his visa through September 13, 1999. *Id.*; *See also Form I-94*. By falsely claiming to be a citizen of South Africa, the applicant has procured admission into the United States by fraud or willful misrepresentation of a material fact. The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

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. The plain language of the statute indicates that hardship that the applicant's child or that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. If 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 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Nigeria or the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Nigeria, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States, as were both of her parents. *Form G-325A*. She has lived in the United States her entire life. *Statement from the applicant*. Her family continues to live in the United States, and she does not have any family in Nigeria. *Id.* The applicant's spouse has daily contact with her sister and mother who live an hour-and-a-half drive away. *Id.*

*See also statement from the applicant's spouse.* According to the applicant's spouse, separation from her family would increase her emotional duress. *Id.* Her family is her main support group, as well as one of the most important aspects of her life. *Statement from the applicant.* Airline tickets from Nigeria to the United States cost between \$1300 - \$3000, and the applicant's spouse would not have enough money to pay for these tickets or for the international calls necessary to keep in touch. *Id.* The applicant's spouse does not know Nigeria. *Id.* She does not speak or understand Yoruba, the language of the applicant. *Id.* According to the applicant, this language barrier would make her transition to Nigeria more difficult, limiting her employment opportunities and ability to make friends. *Id.* The applicant's spouse stated her plans to return to college and her belief that she would not have the same education opportunities in Nigeria. *Statement from the applicant's spouse.* The applicant and his spouse have a 6 year old U.S. citizen son. *See birth certificate.* The applicant's spouse's mother watches their son on various weekends. *Statement from the applicant's spouse.* If the applicant's spouse were to reside in Nigeria, she would not have the extended support of her family to assist in raising their son. *Statement from the applicant.* When looking at the aforementioned factors, particularly the fact that the applicant's spouse has no family or cultural ties to Nigeria, the long distance, lack of support, and language barriers, the AAO finds that the applicant has established that his spouse would suffer extreme hardship if she were to reside in Nigeria.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As noted previously, the applicant's spouse has numerous family members and support in the United States. *Statement from the applicant; Statement from the applicant's spouse.* The applicant's family's financial status is not stable. *Statement from the applicant's spouse.* The applicant's spouse lost her job in January 2005 (*see termination of employment letter, dated January 17, 2005*), however, she stated that she received another job offer with Sun Trust Bank. *Statement from the applicant's spouse.* The applicant stated that Nigeria has a high unemployment rate. *Statement from the applicant.* While the AAO acknowledges this statement, it does not find; however, that the record demonstrates that the applicant's spouse would be unable to sustain himself and contribute to his family's financial well-being from a location outside of the United States. The applicant stated that his spouse is experiencing symptoms of Major Depressive Disorder of a moderate degree and had demonstrated a high level of anxiety. *Id.* The AAO notes that there is no documentation in the record from a licensed professional diagnosing the applicant's spouse. While the AAO acknowledges the applicant's spouse's statement of being emotionally devastated if the Form I-601 waiver were denied (*statement from the applicant's spouse*), 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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in 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(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.