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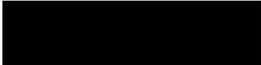
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CHICAGO, IL

Date:

FEB 02 2007

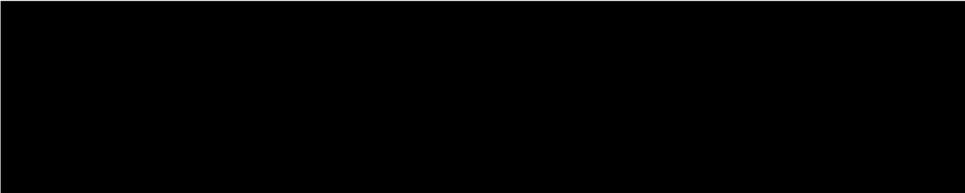
IN RE:



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:



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, Chicago, Illinois 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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a United States 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 United States citizen spouse.

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 April 29, 2005.*

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of fact and law in finding that the applicant failed to disclose how he entered the United States and 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 written by the applicant's spouse, dated August 1, 2004; a statement written by the applicant, dated August 1, 2004; a psychological report from [REDACTED], licensed clinical psychologist, dated August 16, 2004; letters of support from family and friends; tax statements for the applicant and his spouse; and an employment letter for the applicant's 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 in his adjustment for status interview, the applicant admitted that on January 1, 1997 he gained entry into the United States by falsely using another person's passport. *Form I-485; statement written by the applicant, dated August 1, 2004.* Counsel asserts that the applicant was forthcoming in his

adjustment of status interview, voluntarily offering information about his admission to the United States and thus amending his application. The AAO acknowledges counsels assertion; however, still finds that the applicant procured admission into the United States by fraud or willful misrepresentation of a material fact in that he used another person's passport. The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

A section 212(i) waiver of inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that inadmissibility imposes 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 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 hardship relevant to eligibility in the present case is the hardship that would be suffered by the applicant's U.S. citizen 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 qualifying relative 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. *See U.S. birth certificate*. She does not have any family ties in Nigeria. *Statement written by the applicant, dated August 1, 2004*. The applicant's spouse has never visited Africa and fears living in Nigeria due to the political instability and uncertainty. *Id.* She would also face language barriers in Nigeria. *Id.* The applicant's spouse's father underwent two separate heart surgeries within the last few years. *Statement written by the applicant's spouse, dated August 1, 2004*. Although the record does not address who assisted in the caretaking of the applicant's spouse's father during his illnesses and whether he currently needs help, the AAO notes that the applicant's spouse lives in Chicago as does her father, while her mother lives in Arkansas. *Form G-325A for the applicant's spouse*. The applicant's spouse worries that if she were to reside in Nigeria, neither she nor the applicant would be able to earn a living. *Psychological report, [REDACTED] licensed clinical psychologist, dated August 16, 2004*. While the AAO acknowledges these financial concerns, it notes that there is nothing in the record to demonstrate that the applicant and his spouse would be unable to sustain themselves in Nigeria. However, when cumulatively looking at the aforementioned factors, particularly the fact that the applicant's spouse has no family or cultural ties to Nigeria, the language barriers she would face,

as well as the country conditions, the AAO finds that the applicant demonstrated extreme hardship to his spouse 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 previously noted, the applicant's spouse's family resides in the United States and she has no family ties to Nigeria. *Form G-325A for the applicant's spouse; Statement written by the applicant, dated August 1, 2004.* The applicant's spouse stated that the applicant helped her to pay bills when she was sick and unable to work for pay. *Statement written by the applicant's spouse, dated August 1, 2004.* The AAO notes that the record does not address any type of health condition the applicant's spouse may currently have that limits her ability to work. Furthermore, the record notes that the applicant's spouse has worked in the same job for over 10 years as an order processor for a catalogue company. *Psychological report, [REDACTED] licensed clinical psychologist, dated August 16, 2004. See also employment letter.* The applicant's spouse stated that if she is separated from the applicant, she does not know how she would be able to cope with the loss. *Psychological report, [REDACTED] licensed clinical psychologist, dated August 16, 2004.* She fears that this type of separation would send her into prolonged grief and depression. *Id.* She cannot imagine a life without the applicant. *Statement written by the applicant's spouse, dated August 1, 2004.* 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.