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JUL 12 2007

FILE: [REDACTED] Office: SAN FRANCISCO DISTRICT OFFICE Date:

IN RE: [REDACTED]

PETITION: 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 PETITIONER:

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, Chief  
Administrative Appeals Office

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

The applicant, a citizen of Nigeria, was found 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant 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 and reside with her United States husband.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, counsel contends that the applicant's husband, a United States citizen, would suffer extreme hardship if the applicant were required to return to Nigeria. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (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 states, in pertinent part, the following:

- (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.

Regarding the applicant's grounds of inadmissibility, the record reflects that she entered the United States on August 5, 2000, using a passport issued to another person. Thus, the applicant entered the United States by making a willful misrepresentation of a material fact (her identity) in order to procure entry into the United States. Accordingly, the applicant is 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 attempting to enter the United States by making a willful misrepresentation of a material fact (his identity) in order to procure entry into the United States. She does not dispute his inadmissibility. Rather, she is filing for a waiver of inadmissibility.

A section 212(i) waiver of the bar to admission resulting from a 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 that 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).

Thus, the first issue to be addressed is whether the applicant's return to Nigeria would impose extreme hardship on a qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion.

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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally 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 concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to United States citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted), the BIA held that:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

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).

On appeal, counsel contends that the applicant qualifies for a waiver of inadmissibility. Counsel contends that the applicant's forced return to Nigeria would inflict extreme hardship on her husband. Counsel contends that the applicant's husband would experience extreme hardship if the applicant were returned to Nigeria.

The applicant's husband is a forty-nine-year-old citizen of the United States. He has lived in the United States since 1988; he obtained citizenship in 2002. He and the applicant have been married since December 13, 2002.

The applicant submitted a March 10, 2004 affidavit from her husband with her initial waiver submission. In his affidavit, the applicant's husband states his love for the applicant and says he will experience extreme hardship if she is returned to Nigeria. He states that he has suffered psychiatric episodes in the past when confronted with stressful situations, and fears that he could suffer another breakdown if he is separated from the applicant. He also states that he is not a wealthy man, and that he relies on his wife's supplemental income to meet their household expenses.

The applicant also submitted a psychological evaluation from [REDACTED], a licensed psychologist and marriage family therapist. On appeal, the applicant provides an updated letter evaluation from [REDACTED] in which she states the following:

While currently functioning reasonably well, [the applicant's husband] has a history of serious psychological instability. [He] relies greatly upon his wife, [the applicant], for emotional and practical support, and it is apparent that this marriage is extremely important in maintaining his psychological well being.

[The applicant's husband] has had two serious psychiatric emergencies in his adult life. Both have resulted in psychiatric hospitalization. The first episode occurred in December of 1991. [The applicant's husband] describes it as a very stressful time. He was laid off from a job, had no money, and felt scared and desperate. He was troubled by nightmares and became delusional and psychotic. He thought someone was trying to kill him, and one night began shouting uncontrollably. He finally called the police for help. The police brought him to Alta Bates Hospital where he was placed on an involuntary hold (5150) for grave disability due to psychotic and delusional symptoms, danger to himself and to others. He received a diagnosis of Acute psychotic reaction secondary to schizophrenic thought process disturbance, with a possible rule out diagnosis of Schizoaffective Disorder. He was stabilized with Haldol, an anti-psychotic medication, and remained hospitalized for five days. [He] received follow-up psychiatric treatment. . . .

A second psychiatric hospitalization occurred in 1992 at the time of [the applicant's husband's] divorce from his first wife. [He] was devastated by his wife's decision to file for divorce. In addition, a business venture he'd been involved in fell apart, and [he] felt betrayed by his business partners. He describes a period of shock in which he began to spiral downward emotionally. [The applicant's husband] had a second psychotic episode. He began hearing voices, [and started] talking and arguing incoherently. He began driving in an out of control manner and when he ran a red light, got into a car accident. The police intervened. [The applicant's husband] was again hospitalized at Highland Hospital and continued to receive psychiatric treatment on an outpatient basis for six months after he was released. . . .

My interview with [the applicant's husband] and my review of his medical records lead me to conclude that he most likely suffers from Schizoaffective Disorder . . . a disorder

which results in periods of severe mood instability and psychotic symptoms, both of which can be brought on or exacerbated by life stressors.

While [the applicant's husband] is currently not receiving any psychiatric treatment, he reports, and his wife, [the applicant] concurs, that [the applicant's husband] continues to be prone to depression as well as to periods of extreme excitability and worry. . . .

The marriage to [the applicant] clearly provides [the applicant's husband] with the support and stability he needs to maintain his current level of psychological functioning. [His] psychiatric diagnosis is not something that can be cured but rather requires lifelong management. . . .

In his denial, the district director stated that the two psychiatric episodes that the applicant's husband occurred over ten years ago, and that no evidence had been submitted to verify any of his statements. The director also discounted [redacted] testimony, as her original evaluation did not provide her contact information. He also noted that she had submitted no evidence to support her assertions, and that he could not ascertain whether the applicant's husband is currently taking any information.

On appeal, the applicant provides an updated evaluation from [redacted] which contains her contact information, and provides evidence regarding many of the events cited by [redacted] and the applicant's husband. Specifically, the record now contains information regarding the applicant's husband's first psychiatric episode.

The applicant's husband was involuntarily admitted to Alta Bates-Herrick Hospital in Berkeley, California on December 30, 1991 (he was initially arrested by the Oakland Police Department, which filed a subsequent Application for Emergency Psychiatric Detention on his behalf) after exhibiting disruptive behavior at a local business establishment. Although he was initially to be examined for a period of 72 hours, the period of examination was extended another 48 hours. He was released on January 4, 1992. According to the hospital's Notice of Certification to the California Department of Mental Health, the applicant's husband was "gravely disabled." In the field of the form titled "specific facts which form the basis for our opinion," [redacted] and [redacted] stated the following:

Patient was taking off his clothes in public; inappropriate and dysfunction[al] behavior; hallucinating; quite psychotic and out of touch with reality.

According to the December 30, 1991 psychiatric admission note, at the business establishment the applicant's husband had "exhibited confused behavior, also with gross anxiety, and appeared to be responding to internal stimuli, specifically auditory hallucinations." In the January 4, 1992 discharge summary, [redacted] stated his opinion that the applicant's husband had suffered an acute psychotic reaction secondary to probable schizophrenic thought process disturbance.

Although the record contains extensive documentation regarding this first psychiatric episode, medical records from the second psychiatric episode have not been provided. Counsel states that they have not yet been obtained but that the record will be supplemented once they are obtained.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding

that “lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.”); *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, “the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one’s home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent’s circumstances.”); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

In addition, the court in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), held that, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and that, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be considered in the assessment of hardship factors in the present case.

In the instant case, the applicant is required to demonstrate that her husband would face extreme hardship in the event the applicant is required to return to Nigeria, regardless of whether her husband accompanies her to Nigeria or remains in the United States.

The AAO finds that the applicant’s husband would face extreme hardship if the applicant were required to return to Nigeria and he remained, without her, in California. If he remains in the United States without the applicant, he is likely to face both emotional and economic stress, which could lead to another psychiatric episode, as attested to by [REDACTED]. According to [REDACTED] the marriage provides the applicant’s husband with the support and the stability he needs to maintain his current level of psychological functioning.

However, the record as currently constituted does not support a finding that the applicant’s husband will face extreme hardship if he were to return with her to Nigeria. The applicant’s husband is a native of Nigeria and neither he nor the applicant have provided statements or documentation indicating that he would face hardship of any kind if he were to return with her to Nigeria. Without such information, the AAO is unable to analyze whether any hardship he would face would rise to the level of “extreme” as set forth in the statute and caselaw.

In limiting the availability of the waiver to cases of “extreme hardship,” Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that

economic detriment alone is insufficient to establish extreme hardship). The AAO finds that the District Director properly denied this waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that the applicant's husband would suffer hardship beyond that normally expected upon the removal of a spouse.

A review of the documentation in the record, when considered in its totality, reflects that, the applicant has demonstrated that her United States citizen husband would suffer extreme hardship if he were to remain in the United States upon the applicant's removal to Nigeria, she has failed to demonstrate, or even assert, that he would face extreme hardship if he were to return to Nigeria with the applicant. Accordingly, the waiver application must be denied.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director's denial of the waiver application.

**ORDER:** The appeal is dismissed. The waiver application is denied.