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FILE:

Office: PHOENIX, AZ

Date: JUL 18 2007

IN RE:

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.

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, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant ([REDACTED]) is a native and citizen of Nigeria who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for seeking admission into the United States by fraud or willfully misrepresenting a material fact. The applicant is the spouse of a U.S. citizen [REDACTED]. She seeks a waiver of inadmissibility. The district director denied the waiver finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated August 9, 2005.

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C).

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

- (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 chapter is inadmissible.

The district director stated that immigration records reflect that on February 22, 1990, the applicant entered the United States by presenting to immigration officials a Nigerian passport and visitor visa bearing a false identity. On the basis of the misrepresentation of identity, the director was correct in finding the applicant inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted here.

On appeal, counsel states the following. Citizenship and Immigration Services (CIS) erred by denying the waiver application. [REDACTED] must remain in the United States so as to provide a future for his children who are entitled to an education in the United States. [REDACTED] would be deprived of employment opportunities in the United States if he joined the applicant in Nigeria where language and cultural barriers pose adjustment and employment problems. CIS requests the applicant prove a negative: there is no one who is able to help her husband care for their children. Furthermore, help by others would not replace the care of a mother. CIS ignores [REDACTED]' physical injury and the heart condition of their daughter. CIS' claim that no hardship exists because the applicant and her husband knew of her unlawful status in the United States should not be held against the applicant. *Counsel's Brief in Support of the Appeal*.

The record contains medical documents, a marriage certificate, birth certificates, letters about the applicant, certificates awarded to the applicant, school records, tax records, wage statements, a family impact statement, and other documents.

The family impact statement, written by [REDACTED] is dated May 3, 2005. In the statement [REDACTED] makes the following assertions. [REDACTED] was working full-time when he suffered a fall four

years ago that left him with multiple leg and back injuries. He has not been able to work since this injury. [REDACTED] has continued to work full-time at a 3rd shift position with Banner Health to financially support the family and provide health insurance. Due to her husband's disabilities, she does most of the household duties. [REDACTED] and her husband stress that it would be difficult emotionally and physically for him to care for the family without her. [REDACTED] sends money to her family living in Nigeria. [REDACTED] worries about leaving her children in the United States. She and her husband meet DSM IV Criteria for "Adjustment Disorder with Mixed Emotional Features of Anxiety and Depression, Code 309.28," and her symptoms will worsen if she is forced to leave the country.

The medical records pertaining to the [REDACTED] daughter indicates that she has a small membranous ventricular septal defect, but has no evidence of congestive heart failure or pulmonary hypertension. The letter dated October 24, 2002 from [REDACTED] states that their daughter's long-term prognosis, from a cardiac standpoint, is excellent.

The record reflects that [REDACTED] fell from a roof on July 23, 2001. The document entitled "Physician's Monthly or Final Report and Statement," pertaining to a June 24, 2003 evaluation, states that [REDACTED] is on a modified work status with "no real hard work." It states that whatever his activity restriction is he will remain on a modified duty program involving light duty, and that he cannot lift, shove, push, pull, or carry heavy weights. He is "more of a sit-down or sedentary kind of guy with occasional moving about."

It is noted that [REDACTED] educational level is reported as two years of college, and his last full-time work as occurring in July 23, 2001 as a general trades/electrician. [REDACTED] is reported to currently work in facility maintenance. *Department of Veterans Affairs, Phoenix Regional Office, Rating Decision, dated September 23, 2004.* The record reflects workman's compensation payments made to [REDACTED] from 2002 to July 2003.

The findings of the Industrial Commission of Arizona, dated January 9, 2004, indicate that [REDACTED] sustained a 20% general physical functional disability as a result of the fall, and an 11.58% reduction in his monthly earning capacity, entitling him to \$132.50 per month. His medical limitations, according to the findings, would not preclude him from performing the duties of an electronic assembler or comparable work.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon showing that the bar to admission imposes an extreme hardship on a qualifying relative, which is the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or to his or her child is not a consideration under the statute; it will be considered here only to the extent that it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen husband is the only qualifying relative. If extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In his affidavit, the applicant's husband states that since his injury in 2001 his wife has taken over as the head of the household, that she has not been able to spend as much time with their children as before the accident, and that he cannot raise the children by himself. *Affidavit of Applicant's Husband*, dated May 6, 2005.

The record reflects that the applicant and her husband married on August 23, 1997. It contains the birth certificates of their two children, Yewande, born on November 28, 1997; and Glenn Ray Lewis, II, born on August 16, 1999.

The record contains a letter indicating that the applicant worked for Evergreen Valley Health and Rehabilitation Center since March 20, 2003 as a full-time certified nursing assistant. *Letter from* [REDACTED] [REDACTED] dated July 31, 2003. It also contains a letter from Banner Baywood Heart Hospital, which conveys that [REDACTED] was employed there since December 27, 2004 as a full-time patient care assistant working on the night shift.

In the record there is a head start volunteer certificate awarded to the applicant for volunteer service to the Head Start Program during the past year. *Signed by the project director, dated May 26, 2004.* There is an April 5, 2005 letter from the Maricopa County Head Start Parent Involvement Coordinator stating that the applicant volunteered for head start during the school year of 2002-2004. The coordinator indicates that [REDACTED] was active in parent meetings, assisted classroom teachers in daily activities with children, and assisted during meal service and in playground supervision. The coordinator states that children saw her as a teacher and teachers considered her as a partner in educating children.

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* at 565. In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) 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 U.S. 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. The BIA has held:

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.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

It is noted that emotional hardship should be weighed against the fact that the record suggests that prior to [REDACTED] marriage to the applicant he was aware that she had gained admission into the United States through fraudulent means. *Matter of Cervantes, supra* at 567, indicates that such knowledge is a relevant consideration in the hardship determination.

With the instant case, the AAO will analyze extreme hardship in the event that the qualifying relative remains in the United States; and in the alternative, that he or she accompanies the applicant overseas. A qualifying

relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record fails to establish that the applicant's husband would endure extreme hardship if he remained in the United States without his wife.

██████████ indicates that the family relies on his wife and that since his injury in 2001, his wife has taken over as the head of the household. The record conveys that he sustained a 20% general physical functional disability as a result of the injury, and an 11.58% reduction in his monthly earning capacity. However, it reveals that ██████████ is now working in facility maintenance. *Department of Veterans Affairs, Phoenix Regional Office, Rating Decision, dated September 23, 2004.* Thus, the record does not represent ██████████'s injury as rendering him unable to work or drastically limiting his ability to work. Although the family impact statement (dated May 3, 2005) prepared by ██████████ states that the applicant is the sole financial provider for the family, the record contains no evidence that establishes that ██████████ is presently not able to financially support himself and his family if the applicant's waiver application is denied. Furthermore, U.S. courts have universally held that economic detriment alone is insufficient to establish extreme hardship. *See, e.g., INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981) (upholding BIA finding that economic loss alone does not establish extreme hardship) and *Mejia-Carrillo v. United States INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic loss alone does not establish extreme hardship, but it is still a fact to consider).

Courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[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." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, the fact that the applicant has two U.S. citizen children is not sufficient, in itself, to establish extreme hardship. The general proposition is that the mere birth of a deportee's child who is a U.S. citizen is not sufficient to prove extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit has stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In a per curiam decision, *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance

of ties does not constitute extreme hardship). The Ninth Circuit in *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.

In the family impact statement, [REDACTED] states that [REDACTED] and his wife meet DSM IV Criteria for Adjustment Disorder with Mixed Emotional features of Anxiety and Depression, Code 309.28, and that the applicant's condition will worsen if she had to leave the country.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted family impact statement is based on a single interview between the applicant's spouse and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the disorder suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted family impact statement, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [REDACTED]'s findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The record reflects that the applicant's husband is very concerned about separation from his wife. The record discloses that the applicant has been actively involved in the education of her children, who are aged nine and seven. [REDACTED] has expressed that the family relies on her. In the family impact statement, [REDACTED] states that [REDACTED] stressed that it would be very difficult emotionally and physically for him to care for the family without his wife; and that the applicant expressed distress about the consequences that her absence would have on her children if she had to return to Nigeria. The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of separation from a loved one. It has taken into consideration all of the evidence in the record, including the family impact statement. However, the AAO finds that [REDACTED] situation, if he chooses to remain in the United States, is typical to individuals separated as a result of deportation or exclusion and, unfortunately, does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship to be endured by Mr. [REDACTED] while separated from his wife of 10 years, is unusual or beyond that which is normally to be expected upon deportation. *See Hassan and Perez, supra*.

The record is insufficient to establish that [REDACTED] would endure extreme hardship if he joined his wife in Nigeria.

The conditions in Nigeria, the country where [REDACTED] would live if he joined the applicant, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted). Even a significant reduction in the standard of living is not by itself a ground for relief. *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986). "General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien." *Kuciemba v. INS*, 92 F.3d 496, 500 (7th Cir. 1996), (citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir.1985)).

Economic hardship claims of not finding employment in Mexico were found not reach the level of extreme hardship. *Marquez-Medina v. INS*, 765 F.2d 673, 676-677 (7th Cir. 1985). In *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), the Ninth Circuit upheld the BIA's finding that hardship in finding employment in Mexico and in the loss of group medical insurance did not reach "extreme hardship." In a per curiam decision, *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975), the Fifth Circuit found that difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship. Furthermore, "second class" medical facilities in foreign countries are not per se extreme hardship. *Matter of Correa, supra*.

However, in *Carrete-Michel v. INS*, 749 F.2d 490, 493 (8th Cir. 1984), the court stated that the BIA improperly characterized as mere "economic hardship" [REDACTED]'s claim, which was supported by evidentiary material, that he would be completely unable to find work in Mexico. The court stated that "[a]lthough economic hardship by itself cannot be the basis for suspending deportation, *Immigration and Naturalization Service v. Wang*, 450 U.S. at 144, 101 S.Ct. at 1031, we agree with the Ninth Circuit that there is a distinction between economic hardship and complete inability to find work. *Santana-Figueroa*, 644 F.2d at 1356-57."

Counsel asserts that forcing [REDACTED] to work in Nigeria will deprive him of the best employment opportunities offered in the United States, causing him extreme hardship. In light of the holdings in *Marquez-Medina*, *Carnalla-Munoz*, and *Pelaez*, cases that convey that the economic hardship claim of not finding work in an alien's home country does not establish extreme hardship, the AAO finds counsel's assertion unpersuasive in demonstrating extreme hardship to [REDACTED].

Counsel states that [REDACTED] would endure extreme hardship because he would confront language and cultural barriers in Nigeria and would have to relocate and adjust to a new country. The court in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir.1986), found allegations of a lower standard of living in Mexico and difficulties of readjustment to that culture and environment were not sufficient to establish extreme hardship. Thus, the AAO finds unpersuasive counsel's claims of hardship due to cultural barriers and adjustment to a new culture in light of the holding in *Ramirez-Durazo*. Furthermore, the AAO finds that [REDACTED]' adjustment to a new culture can be alleviated with the assistance of the applicant's family living in Nigeria and by the fact that English is the official language in Nigeria. See *U.S. Department of State, Bureau of African Affairs, 2007 Background Note*.

Counsel states that the applicant's U.S. citizen children have a right to be educated in the United States, where there are the best educational opportunities.

Although hardship to the applicant's children is not a consideration under section 212(a)(9)(B)(v) of the Act, the hardship endured by the applicant's husband, as a result of his concern about the well-being of his children, is a relevant consideration.

With regard to a child's education in a foreign country, in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir.1986), the Ninth Circuit stated that "[t]he disadvantage of reduced educational opportunities for the children was also considered by the BIA and found insufficient to establish "extreme hardship." It also stated that "[a]lthough the citizen child may share the inconvenience of readjustment and reduced educational opportunities in Mexico, this does not constitute "extreme hardship." In *Banks v. INS*, 594 F.2d 760, 762 (9th

Cir. 1979), the Ninth Circuit states that “[w]hile changing schools and the language of instruction will admittedly be difficult, Banks herself admitted that [REDACTED] would be able to learn the German language. The possibility of inconvenience to the citizen child is not itself sufficient to constitute extreme hardship under the statute.”

In light of the court’s reasoning and holding in *Ramirez-Durazo v. INS* and *Banks v. INS*, the record is insufficient to establish that attending school in Nigeria would establish extreme hardship.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.