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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: ACCRA, GHANA Date: MAR 1 2 2007

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(h)and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182 (h) and 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Acting Officer in Charge, Accra, Ghana, denied the waiver application, and it 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 pursuant to sections 212(a)(2)(A)(i)(I) and 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(2)(A)(i)(I) and 1182(a)(6)(C)(i), for having been convicted of a crime involving moral turpitude and either attempting to procure or having procured a visa, admission to, or immigration benefits in the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized U.S. citizen and the father of four U.S. citizen sons and daughters. He seeks a waiver of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. §§ 1182(h) and 1182(i), in order to reside in the United States with his spouse and children.

The acting officer in charge 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 Inadmissibility (Form I-601) accordingly. *Decision of the Acting Officer in Charge*, dated April 19, 2005.

The record reflects that, in 1977, the applicant married [redacted], a Nigerian national and citizen at the time. The record reflects that, in 1979, the applicant was issued an F-1 student visa and was admitted to the United States. The applicant failed to maintain his student status by taking up unauthorized employment and transferring schools without permission. On October 22, 1980, the applicant was convicted of theft and was sentenced to 30 days in jail, which was suspended in favor of 12 months of probation. In 1981, the applicant returned to Nigeria and made an application for a new F-1 nonimmigrant student visa. The applicant failed to inform the U.S. Embassy of his immigration violations and was issued an F-1 nonimmigrant visa.

On January 16, 1981, the applicant was admitted as an F-1 nonimmigrant student. On April 16, 1982, the applicant was convicted of making false statements in an application for a U.S. passport, in violation of 18 U.S.C. § 1532, and was sentenced to 18 months in jail. On October 20, 1982, the applicant was placed into immigration proceedings. On December 7, 1982, the applicant pled guilty to theft. On June 7, 1983, the applicant divorced [redacted]. On June 9, 1983, the applicant married [redacted], a U.S. citizen. On June 15, 1983, [redacted] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved the same day. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the approved Form I-130. In April 1984, [redacted] withdrew the Form I-130. On April 24, 1984, the Form I-130 was officially revoked, however, the applicant continued to attempt to process the Form I-485. On April 9, 1986, the Form I-485 was denied.

On April 28, 1987, the applicant filed an Application to Replace Lawful Permanent Resident Card (Form I-90), claiming that he was admitted to the United States as a lawful permanent resident in June 1983 and that his lawful permanent resident card was lost, stolen, destroyed or mutilated.

On July 19, 1988, the applicant was again placed into immigration proceedings. On November 22, 1988, the immigration judge granted the applicant voluntary departure until January 22, 1989. The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal. On February 6, 1989, a warrant for the applicant's removal was issued. On September 15, 1988, the

applicant and marriage was annulled. On September 16, 1988, the applicant married , a U.S. citizen. On October 16, 1989, filed a Form I-130 on behalf of the applicant.

On April 30, 1990, a Notice of Intent to Deny the Form I-130 was issued, noting that there was fraud in the applicant's marriage to . The applicant had held himself out as being married to and residing with when he was in fact continuing to reside with his first wife, . The applicant and Ms. had also had children together during this period of time. The applicant had also given false information in regard to details surrounding dates of marriages, divorces and the paternity of children belonging to Ms. On May 30, 1990, the Form I-130 was denied.

On July 19, 1990, the applicant was convicted of making a false statement in a matter before the immigration service, in violation of 18 U.S.C. § 1001, and was sentenced to 8 months in jail. On April 24, 1991, the applicant was removed from the United States and returned to Nigeria. On March 7, 1997, the applicant remarried who had now become a naturalized U.S. citizen. On March 12, 1997, filed the Form I-130 on the applicant's behalf, which was approved the same day.

On June 20, 1997, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, the applicant contends that his wife and children are suffering extreme hardship because they have been separated since 1991 and states that is a heart patient. *See Applicant's Affidavit,* submitted May 24, 2005. In support of his contentions, the applicant submitted the referenced affidavit, medical documentation for and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(2)(A)(i) of the Act states in pertinent part:

> (1) Criminal and related grounds. —
>
> (A) Conviction of certain crimes. –
>
> (i) In general. – Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

> Waiver of subsection (a)(2)(A)(i)(I) . . .

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I). . . if

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –

(i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

The acting officer in charge based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's convictions for theft, a crime involving moral turpitude. The applicant does not contest the acting office in charge's determination of inadmissibility.

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 Act is inadmissible.

. . . .

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

(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 acting office in charge based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the record reflecting the applicant's fraud in attempting to obtain or obtaining a visa, admission and other immigration benefits under the Act. On appeal, the applicant does not contest the acting office in charge's determination of inadmissibility.

A section 212(h) waiver is either dependent upon a showing of rehabilitation, if it has been more than 15 years since the activities occurred that gave rise to the inadmissibility, or that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, child or parent of the applicant. A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship only on the U.S. citizen or lawfully resident spouse or parent of the applicant. As such, the AAO will adjudicate whether the applicant meets the more restricted requirements of a section 212(i) waiver before it adjudicates whether the applicant is eligible for a section 212(h) waiver.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship in 212(i) cases. Thus, hardship to the applicant's U.S. citizen children will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

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 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).

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).

The record reflects that is a native of Nigeria who became a lawful permanent resident in 1989 and a naturalized U.S. citizen in 1994. The applicant and have a 26-year old daughter, a 22-year old son, a 21-year old son and a 17-year old daughter who are all U.S. citizens by birth. The record indicates that the applicant and are in their 40's and may have some health concerns.

On appeal, the applicant asserts that will suffer extreme hardship if the applicant is denied a waiver application because is faced with trying to support a family with limited resources, she is carrying a double responsibility to support them on limited job skills, she has to raise four children as a single parent which has consequences not only for her but also for the children, she is going through the hell of stress and emotional setback and she is now in need of a heart transplant. In her affidavits, states that she loves and misses her husband and that the children need their father.

Medical documentation indicates that, in February 2004, began hemodialysis due to renal failure and had been encouraged to pursue a transplant as an excellent transplant candidate. A Paratransit Services Physician Verification of Disability Form indicates that has applied for paratransit services until she receives a transplant. While the medical documentation states that has started hemodialysis, it indicates that she does not have heart disease. She does not require a heart transplant, as claimed by the applicant. The medical documentation does not indicate that 's illnesses is related to the applicant's immigration situation or that her treatment requires the presence of the applicant, or that she is unable to receive appropriate medical treatment in the absence of the applicant.

There is no evidence in the record to suggest that is unable to support herself and her family. The medical documentation indicates that intended to continue her employment as a loan officer in a bank. The record shows that the applicant's three oldest children are now adults, and as such, they may be able to assist i financially and physically in the absence of the applicant. While it is unfortunate that essentially became a single parent, raising three children through adulthood, continuing to raise one remaining child, and that professional childcare may be an added expense and not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon removal. While may have had to lower her standard of living, there is no evidence in the record to support a finding of financial loss that would result in an extreme hardship to in supporting her family without additional income from the applicant, even when combined with the emotional hardship described below.

There is no evidence in the record to suggest that has suffered or would suffer emotional hardship beyond that commonly experienced by aliens and families separated by removal. Neither the applicant nor has indicated that her kidney disease is a factor in the emotional toll taken on her by her separation from her husband. Additionally, the record indicates that has family members, such as her adult children, in the United States who may be able to assist her physically or emotionally in the absence of the applicant. While it is unfortunate that has been separated from the applicant and has had to witness her children's separation from the applicant, this is not a hardship that is beyond those commonly suffered by aliens and families upon removal.

The applicant and in their affidavits, do not contend that would suffer hardship if she were to return to Nigeria. The AAO is, therefore, unable to find that would experience hardship should she return to Nigeria. Additionally, the AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, would not experience extreme hardship if she remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is found inadmissible to the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. 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 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th 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 therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver pursuant to section 212(h) of the Act. Having found an applicant statutorily ineligible for relief, the AAO does not normally discuss whether the applicant merits a waiver as a matter of discretion. However, in the present case, the AAO finds that the record's documentation of the multiple instances of immigration-related fraud perpetrated by the applicant warrants discussion. The applicant filed fraudulent immediate relative petitions, applications for adjustment of status, an application for replacement lawful permanent resident card, and a U.S. passport application and identified himself as a U.S. citizen to obtain employment in the United States. Had the applicant established extreme hardship to his U.S. citizen spouse, the nature and extent of this fraud and misrepresentation would have led the AAO to deny the Form I-601 on the basis of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(h) and 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.