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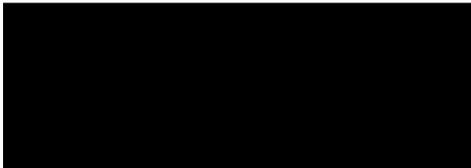
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: LONDON, ENGLAND

Date:

NOV 07 2007

IN RE:

Applicant:



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 Officer-in-Charge (OIC), London, 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)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the OIC denied finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the OIC*, dated October 18, 2005.

The AAO notes that the applicant appears to be represented, but there is no Notice of Entry of Appearance as Attorney or Representative, Form G-28, contained in the record. The applicant will therefore be considered as self-represented.

Although the applicant states that a brief and/or evidence will be submitted to the AAO in 60 days, the record contains no brief and/or additional evidence. Thus, the AAO will consider the record as constituted as complete.

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act.

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.

In an October 14, 2004 letter, the applicant claims that he obtained from his brother a Nigerian passport (No. [REDACTED] issued by an accredited Regional Office of the NIS, the Ibadan Passport Office, located in [REDACTED]

The letter from the Chief, Immigrant Visa Unit, American Embassy London, stated that the applicant presented a fraudulent Nigerian passport (No. [REDACTED] at his initial visa interview and when questioned, falsely stated that he received the passport from the Nigerian High Commission in London. The letter stated that at the second interview, after being informed that a waiver of ineligibility was required, the applicant insisted that the prior passport was legitimate despite having been told on two occasions that the passport was fraudulent and that under Nigerian law a passport could not be obtained by proxy.

The record contains a copy of the fraudulent passport and an August 18, 2004 letter from the Fraud Prevention Unit of the American Embassy, London, to the Nigerian High Commission located in London, and the response dated September 1, 2004 to the Fraud Prevention Unit letter. The letter from the Head Immigration Affairs for High Commissioner stated that the Nigerian passport [REDACTED] cannot be issued by proxy. The letter further stated that a Nigerian passport issued outside the United Kingdom is devoid of emigration and either brought to the United Kingdom by a third party or sent to the United Kingdom by post to the holder is not valid.

The AAO finds that the documentation in the record supports the finding that the applicant presented a fraudulent Nigerian passport so as to procure a visa and gain admission into the United States; thus, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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

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.

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. Hardship to the applicant is not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative in the present case is the applicant's wife, [REDACTED] who is a naturalized citizen of the United States. 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).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant's wife must be established in the event that she joins the applicant; and in the alternative, that she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The applicant states that the denial of the waiver was erroneous. He states that his wife would experience extreme hardship in having to choose between living with him in a foreign country or her daughter and other family members in the United States. He indicates that his wife's former husband may not permit her to move their daughter outside the United States. The applicant states that his wife would lose her job, house, and all that she has achieved in her career if she leaves the United States. He states that she would face a lower standard of living and fewer rights and economic opportunities in the United Kingdom and Nigeria.

The record contains information about the economy of the United States and the United Kingdom; information about Nigeria; letters; a birth and marriage certificate; and other documents.

In an April 20, 2005 letter [REDACTED] states the following. Her family ties to the United States; she has no family ties to either the United Kingdom or Nigeria. She came to the United States when she was 12 years old, attended school here, and is now an accountant earning \$58,895 annually. Her daughter, [REDACTED] was born in 1990 in Virginia and lives with her, and [REDACTED] father lives in California. The applicant is not a citizen of the United Kingdom and has no standing to sponsor her to live there. If the waiver application were denied, she is confronted with the choice of living with her husband abroad or her daughter and parents in the United States. She would like to have more children, but is again faced with the choice of raising them overseas without the presence of her parents, siblings, and daughter; or raising children alone in the United States without her husband; or not having any more children. She would lose her income, home, status, and benefits if she lived in the United Kingdom or Nigeria and she would have fewer rights and economic opportunities and would not have the same standard of living as she now has. She would experience economic hardship if she remained in the United States without the applicant and he would not be able to support her if he lived overseas. She cannot afford to travel overseas. Her daughter would face extreme emotional hardship if separated from her and she would lose custody. Her daughter would lose everyone and everything she knows if she joined her overseas and would not be prepared to live in the United States. Her daughter will experience hardship if they both remain in the United States without the applicant.

In a letter of the same date the applicant indicates that he regrets having lied about the Nigerian passport. He indicates that separation has been a strain on him and his wife, and they are anxious about starting a family.

The April 7, 2005 letter from [REDACTED] indicates that she is concerned about living in the United States without her mother and she describes her family ties to the United States.

In an undated letter [REDACTED] states that he wants to be in [REDACTED] life again.

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

[REDACTED] claims that she would experience financial hardship if she remained in the United States without her husband. The record reflects that [REDACTED] states that she earns \$58,895 annually and owns a house. However, except for telephone invoices, no documentation has been presented of [REDACTED] household

expenses; the AAO therefore cannot assess whether [REDACTED] requires financial assistance from the applicant in order to meet household expenses. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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 a U.S. citizen stepdaughter is not sufficient, in itself, to establish 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). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The record conveys that the applicant's wife is very concerned about separation from her husband. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant's wife, 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 as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be experienced by the applicant's wife, is unusual or beyond that which is normally to be expected upon deportation or exclusion. See *Hassan*, *Shooshtary*, *Perez*, and *Sullivan*, *supra*.

The present record is insufficient to establish that the applicant's wife would endure extreme hardship if she joined the applicant in the United Kingdom or in Nigeria.

The AAO is not persuaded by the claim that the applicant has no standing to sponsor his wife to live in the United Kingdom as no evidence has been presented to show that he would not be able to sponsor his wife to live there with him. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

states that she would lose her income, home, status, and benefits if she lived in the United Kingdom or Nigeria; she would have fewer rights and economic opportunities; and she would have a lower standard of living. Court decisions have shown that difficulties in securing employment and the hardships that are a consequence of this such as a lower standard of living and health care are insufficient to establish extreme hardship. See, e.g., *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986) (Even a significant reduction in the standard of living is not by itself a ground for relief); *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980) (upholding the BIA's finding that hardship in finding employment in Mexico and in the loss of group medical insurance did not reach "extreme hardship"); *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975) (difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship); and *Bueno-Carrillo v. Landon*, 682 F.2d 143, 146 (7th Cir. 1982) (claim by respondent that he had neither skills nor education and would be "virtually unemployable in Mexico" found insufficient to establish extreme hardship) ("It is only when other factors such as advanced age, illness, family ties, etc., combine with economic detriment that deportation becomes an extreme hardship").

If she joins her husband overseas, states that she would have to leave her daughter, parents, and siblings who live in the United States, and the country where she has spent most of her life. The AAO recognizes that's adjustment to the culture and environment in the United Kingdom or Nigeria would be difficult; but these difficulties would be mitigated by the moral support of her husband and his relatives if they lived in Nigeria; and the presence of her husband if she joined him in the United Kingdom.

The assertion has been made that may lose custody of her 17-year-old daughter if she joins the applicant overseas. However, no evidence has been presented to show that would request custody of their daughter if were to live overseas. The undated letter in the record from indicates that he has been separated from his daughter and wants to renew a relationship with her. letter conveys that she spends summers with her father; no evidence has been furnished to show that she would not be able to continue this if she were to join her mother to live overseas.

states that her daughter would lose everyone and everything she knows if she lived overseas and would not be prepared to live in the United States. Although hardship to the applicant's stepchild is not a consideration under section 212(i) of the Act, the hardship endured by his wife, as a result of her concern about the well-being of her child, is a relevant consideration.

The record indicates that the applicant's wife has a 17-year-old daughter from a prior relationship. With regard to a child's education and adjustment 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, [redacted] herself admitted that [redacted] would be able to learn the German language.”

The AAO finds that the submitted documentation has not established that the applicant’s stepdaughter would have reduced educational opportunities in either the United Kingdom or in Nigeria. Furthermore, the AAO notes that the language of instruction in the United Kingdom is in English, and English is the official language in Nigeria. As stated in *Ramirez-Durazo*, the inconvenience of adjustment is not 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.