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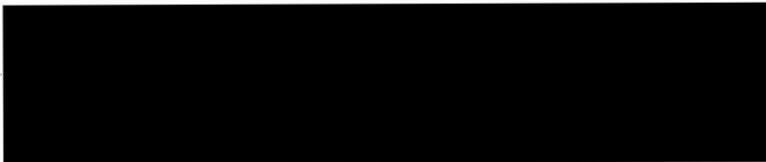
APR 22 2008

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, St. Paul, Minnesota and the matter 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)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having previously acquired lawful permanent resident status through fraud or willful misrepresentation in 1992. The applicant is married to a U.S. citizen and is the father of two U.S. citizen children. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) to remain in the United States with his family.

The district director concluded that the record did not establish that a qualifying relative would suffer extreme hardship if the applicant were removed from the United States. She denied the application accordingly. *Decision of the District Director*, dated April 28, 2006.

On appeal, counsel states that the district director erred in denying the Form I-601, Application for Waiver of Ground of Excludability, by relying on sections 212(a)(2)(A)(i)(I) and 212(h) of the Act to reach her decision. He contends that the applicant has met his burden with regard to the Form I-601 waiver request. *Form I-290B, Notice of Appeal to the Administrative Appeals Office*, dated May 24, 2006; *Counsel's brief*, dated June 23, 2006.

The record indicates that on December 1, 2004, the applicant filed the Application to Register Permanent Residence or Adjust Status (Form I-485) based on the Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse, [REDACTED]. The district director denied the Form I-485 based on the applicant's failure to disclose a bigamous marriage during a 1992 adjustment of status proceeding. Accordingly, he is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or willful misrepresentation.

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.

On May 11, 1992, the applicant was approved for lawful permanent resident status, based on the Form I-130 filed on his behalf by a previous spouse, [REDACTED] whom he had married on September 15, 1987 in Denton, Texas. However, by March 16, 1988, the date on which [REDACTED] filed the Form I-130 benefiting the applicant and the applicant submitted the Form I-485, the applicant had entered into a second marriage with [REDACTED], whom he had married on December 21, 1987 in Menomonie, Wisconsin, without terminating his marriage to [REDACTED].<sup>1</sup> The applicant did not disclose his marriage to [REDACTED] during his 1992 adjustment proceeding. In that the applicant's failure to disclose his second marriage cut off a line of inquiry that was relevant to his eligibility for adjustment of status, he is found to have misrepresented a material fact in order to gain an immigrant benefit and is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act.<sup>2</sup>

The AAO acknowledges counsel's observations regarding the references to sections 212(a)(2)(A)(i)(I) and 212(h) of the Act in the district director's decision. Counsel correctly notes that the inadmissibility in this matter is that of misrepresentation, which as already noted, falls under section 212(a)(6)(C)(i) of the Act and that such an inadmissibility is waived under the requirements set forth in section 212(i) of the Act. However, as the favorable exercise of the Secretary's discretion under both sections 212(h) and 212(i) requires an applicant to first establish extreme hardship to a qualifying relative, the AAO does not find the district director to have judged the evidence of record by the wrong legal standard. Moreover, even if the director had applied the wrong standard in this matter, it is not clear what remedy would be appropriate beyond the appeal process itself. Accordingly, the AAO now turns to a consideration of the applicant's Form I-601 waiver application.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. In the present case, the only qualifying is [REDACTED] the applicant's spouse. Hardships the applicant and his U.S. citizen children experience as a result of separation are not considered in section 212(i) waiver

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<sup>1</sup> The applicant and [REDACTED] did not divorce until October 5, 1992

<sup>2</sup> The Supreme Court in, *Kungys v. United States*, 485 US 759 (1988) found that the test of whether concealments or misrepresentations are "material" is whether they can be shown by clear, unequivocal, and convincing evidence to have been predictably capable of affecting, i.e., to have had a natural tendency to affect, the Immigration and Naturalization Service's (now Citizenship and Immigration Services) decisions. In addition, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well result in proper determination that he be excluded.

In this matter, the applicant's bigamous marriage to [REDACTED] would have been directly relevant to his eligibility for lawful permanent resident status and would have likely resulted in a determination of inadmissibility.

proceedings, except as they would affect the applicant's spouse. Should extreme hardship be 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 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 age of the qualifying relative may be an additional relevant factor. See *Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, 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).

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 notes that extreme hardship to [REDACTED] must be established in the event that she resides in Nigeria or remains in 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 now turns to a consideration of the relevant factors in this case.

The record includes the following evidence to establish the applicant's claim that [REDACTED] would suffer extreme hardship if he were to be removed from the United States: counsel's brief, dated June 23, 2006; statements from [REDACTED], one undated and one dated June 22, 2006; a January 8, 2004 statement from the applicant; a psychiatric evaluation of [REDACTED], dated June 19, 2006; a Department of State travel warning for

Nigeria, dated February 17, 2006; tax records, letters of employment and earnings statements for the applicant and [REDACTED] a property tax statement for 2004; and utility and cable bills.

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to his spouse in the event that she relocates to Nigeria. In his brief, counsel asserts that [REDACTED] has no relatives who live outside the United States and no knowledge of day-to-day life in Nigeria. He reports that the Department of State has issued a travel warning for Nigeria, which advises U.S. citizens against traveling to Nigeria and that a 2005 State Department country report for Nigeria finds the country to have inadequate infrastructure, endemic corruption and general economic mismanagement that hinders economic growth. As a result, counsel asserts, [REDACTED] would not have employment opportunities, nor would she be able to raise her children properly. Counsel also states that the family would not have health insurance in Nigeria and that medical care would be almost nonexistent.

In her statements, [REDACTED] contends that relocation to Nigeria is not a good option for her, as she has lived in Minnesota all her life and, as the oldest child in her family, she is responsible for the care of her parents should something happen to them. She further states that life would be difficult for her in Nigeria because attitudes there are more conservative and the economy is difficult. [REDACTED] contends that her experience in working with developmentally disabled individuals would not be relevant in Nigeria. She also notes that her son has been diagnosed with asthma and his condition would worsen in Nigeria in the absence of consistent, quality health care.

The applicant has failed to submit documentary evidence to establish the economic conditions that counsel and [REDACTED] claim would prevent her from obtaining employment in Nigeria, to demonstrate that the applicant's son suffers from a medical condition that could not be adequately treated in Nigeria or to indicate how his health problems would affect [REDACTED], the only qualifying relative in this matter. Nevertheless, the AAO takes note of the Department of State travel warning for Nigeria included in the record. While the State Department warns U.S. citizens against traveling to Nigeria in general, it particularly notes the security situation in the Niger Delta, the region in which the applicant's Form G-325, Biographic Information, reports he last resided and where his mother continues to live. The travel warning indicates that security in the delta region has deteriorated significantly and that travel there remains very dangerous and should be avoided. Based on the applicant's documentation of the country-wide nature of the security risks that face U.S. citizens in Nigeria and the specific deterioration in the security situation in the applicant's home region, the AAO finds the applicant to have established that [REDACTED] would suffer extreme hardship were she to relocate to Nigeria.

The second part of the analysis requires the applicant to establish extreme hardship in the event that [REDACTED] remains in the United States. Counsel states that the applicant is the primary provider for his family and that their health insurance is provided through the applicant's employment. Were the applicant to be removed from the United States, counsel asserts, his family would become destitute, facing the near certainty of becoming dependent on government assistance. To establish the emotional hardship that separation would create, counsel submits a psychological evaluation prepared by [REDACTED], a professional counselor licensed by the State of Minnesota.

In her statements, [REDACTED] asserts that she has worked on a part-time basis since the birth of her first child and that she and the applicant do not require daycare for their children as the applicant, [REDACTED]'s mother and two babysitters share responsibility for caring for her children while she works. Without the applicant, [REDACTED] asserts, she could not afford to pay the family's mortgage, as well as health insurance and daycare costs. Ms. [REDACTED] states that daycare costs are prohibitively expensive and that working additional hours would not result in more net pay once she had paid for daycare. She also indicates that health care is an expense that she would not be able to handle by herself and that she currently pays \$400 each month through her employment for a plan that covers 80 percent of her medical costs after a deductible is met. [REDACTED] states that her son has asthma and has required many urgent care and emergency room visits for breathing emergencies, as well as regular medication. She contends that, even with insurance, there are many co-pays and deductibles that must be met. [REDACTED] also reports that she and the applicant own a modest home and that she would be unable to keep up with the mortgage payments and additional bills on her salary, thereby losing her home. She states that she cannot even imagine the psychological impact on herself and her children if they were not able to see the applicant again. [REDACTED] asserts that since learning of the denial of the applicant's waiver request, she has been having crying episodes, feeling irritable and paralyzed, and is unable to make decisions.

The applicant states that [REDACTED] works part-time, and that he is the family's main bread winner and works multiple jobs to try to meet the family's expenses. In his statement, the applicant iterates the family's monthly expenses, which total \$3,125. If he were to be returned to Nigeria, the applicant contends, there is no possibility that he could earn enough income to support his family. He notes that if his son were to grow up without knowing his father, that it would bring unimaginable harm to him.

Turning first to the psychological evaluation of [REDACTED] the AAO notes that [REDACTED]'s June 19, 2006 report finds [REDACTED] to have exhibited symptoms of depression, including crying episodes, weight gain, overeating, difficulty making decisions, low frustration tolerance and irritability, as well as symptoms of anxiety, specifically fearfulness and excessive worry. [REDACTED] It finds that [REDACTED]'s psychological state is related to her fear of losing her husband or of being forced to move to Nigeria in order to stay with him. She concludes that [REDACTED] is clearly exhibiting signs of depression and diagnoses her as having Depressive Disorder Not Otherwise Specified. [REDACTED] predicts that if the applicant returns to Nigeria [REDACTED] could suffer grave psychological consequences, including an acute depressive episode rendering her incapable of working or caring for her children. [REDACTED] It also foresees psychological harm to the applicant's children, particularly his son, if the applicant is removed from the United States.

Although the input of any mental health professional is respected and valuable, the AAO finds the submitted evaluation of [REDACTED] to carry little evidentiary weight. Based on two June 2006 interviews of the applicant and [REDACTED], the conclusions reached by [REDACTED] do not reflect the insight and detailed analysis that an established relationship with a mental health professional would provide, rendering them speculative and diminishing the evaluation's value. Moreover, the AAO notes that, having found [REDACTED] to be suffering from depression, [REDACTED] offers no recommendations regarding treatment or medication that would assist Ms. [REDACTED] in dealing with her condition. Neither does the record demonstrate that [REDACTED] has, herself, sought further medical assistance to deal with her depression. Accordingly, the AAO does not find the record to establish the current status of [REDACTED]'s mental health, or the impact that the applicant's removal would have on her mental or emotional health.

The record also fails to demonstrate that [REDACTED] would experience extreme financial hardship if the applicant were removed from the United States. Although counsel claims that the family's health insurance is provided through the applicant's employment, [REDACTED] statements indicate that she pays for health insurance coverage through her employer. [REDACTED] states that even with health insurance, her health care costs are considerable because of her son's asthma. The record, however, fails to offer documentary evidence to establish that the applicant's son has been diagnosed with asthma or that he requires the frequent emergency health services that [REDACTED] indicates increase the family's health care costs. The record also contains no documentation regarding the costs of childcare in Coon Rapids, Minnesota that would support [REDACTED]'s claims regarding her inability to afford such care. Further, although [REDACTED] and the applicant list their monthly expenses in their respective statements, the record contains only two utility bills and a cable bill for 2003, as well as a statement related to their 2004 property tax. The record does not document the \$1,200 monthly mortgage payment claimed by [REDACTED] and the applicant, nor provide sufficient evidence of their other monthly expenses.

The AAO acknowledges that the applicant's removal from the United States would make [REDACTED] a single working parent in need of childcare for her children and that such care would involve additional expense. The AAO also agrees that the applicant's removal from the United States would have other negative financial impacts on [REDACTED]. However, the record does not provide the necessary documentary evidence to establish the nature or extent of these impacts. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). Moreover, although economic factors are relevant in any analysis of extreme hardship, economic detriment alone is insufficient to support a finding of extreme hardship. *See Matter of Pilch*, 21 I&N Dec. 627 (BIA 11996).

When reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, the record does not support a finding that [REDACTED] would face extreme hardship if the applicant were removed and she remained in the United States. Rather, the record demonstrates that she would experience the distress and difficulties normally associated with the removal of a spouse. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and emotional and social interdependence. While, the prospect of separation or relocation nearly always results in considerable hardship to the individuals and families involved, the Congress, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," did not intend that a waiver be granted in every case where a qualifying relationship and, thus, familial and emotional bonds exist. The point made in this and prior AAO 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's removal from 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(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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.