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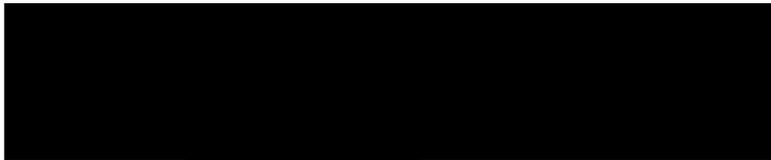
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: LOS ANGELES, CA Date:

FEB 19 2008

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 District Director, Los Angeles, California, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 52-year-old native and citizen of Nigeria who was found 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). The record reflects that the applicant is the spouse of a U.S. citizen, and the beneficiary of an approved relative petition filed on his behalf by his spouse. He seeks a waiver of inadmissibility in order to remain in the United States and adjust his status to that of lawful permanent resident.

The district director found that the applicant failed to establish that his U.S. citizen spouse would experience extreme hardship due to the applicant's inadmissibility and denied the application accordingly.

On appeal, the applicant's spouse claims that her "health has been seriously affected." *See* Statement on Form I-290B, Notice of Appeal to the AAO. Additionally, the applicant's spouse states that she recently started a messenger services business which the applicant presently manages. *See* Letter from Applicant's Spouse Accompanying Appeal. The applicant's spouse claims that "[i]t will be difficult" for the family should the applicant not be granted the waiver. *Id.*

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director determined that the applicant was inadmissible based on the finding (upon an investigation by the U.S. consulate in Nigeria) that he had submitted a fraudulent birth certificate. The district director further cited the applicant's student loan fraud as a basis for her inadmissibility finding. The documents presently in the record do not support a finding of inadmissibility on the basis of the applicant's student loan fraud. The AAO nevertheless concludes that the applicant is inadmissible based on his attempt to submit a fraudulent birth certificate. The director's determination of inadmissibility in this regard is therefore affirmed. The question remains whether the applicant qualifies for a waiver.

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

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

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. Hardship to the applicant himself is not a permissible consideration under the statute. Hardship to an applicant’s child is also not a relevant consideration.

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. 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).

The applicant’s spouse, Patricia Ifeobu, is a 52-year-old native born U.S. citizen. The applicant and his spouse were married in Nevada in 1992. There are no children of the marriage. The applicant’s spouse states that she would face difficulties if the waiver application is denied. *See* Statement on Form I-290B, Notice of Appeal to the AAO and Letter from Applicant’s Spouse Accompanying Appeal. Specifically, the applicant’s spouse cites her health condition, a recent business venture, and separation from her spouse as the factors contributing to the claimed hardship. *Id.*

The AAO notes that the applicant did not submit any financial, medical or other documents to support his spouse’s claim. Indeed, 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 is denied the waiver.

The AAO notes that the record does not contain evidence relating to the nature, severity or onset date of the applicant’s spouse’s claimed medical condition, or an explanation regarding how her medical condition would result in extreme hardship should the waiver be denied. The record also does not contain evidence, other than the applicant’s spouse’s general statement, relating to her family and community ties in the United States, or

in Nigeria. The AAO notes that the applicant's spouse's statement suggests that she has family in the United States. The applicant's spouse's statement further suggests that she has decided to remain in the United States separated from her spouse. The AAO recognizes that, as a U.S. citizen, the applicant's spouse is not required to relocate with the applicant to Nigeria. Doing so would be a matter of personal choice. The applicant's spouse does not explain what, if any, hardship she would face should she decide to relocate. She also does not provide any evidence to corroborate her general claim that she would face financial hardship should the applicant be denied the waiver. The record contains an Affidavit of Support executed by the applicant's spouse on behalf of the applicant and an employment letter verifying her employment. There is no indication that the applicant's spouse is financially dependent upon the applicant. Additionally, the AAO notes that the income tax returns submitted relate only to the applicant (filed as "married filing separately"). There is also no evidence in the record regarding the couple's recent business venture. In sum, the applicant has not met his burden to prove that his spouse would face greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. 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).

While the AAO has carefully considered the impact of separation resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from a spouse is at issue. *See Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that "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"). In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's spouse due to the potential separation from the applicant rises to the level of extreme.

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, 8 U.S.C. § 1182(i).



In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. 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.