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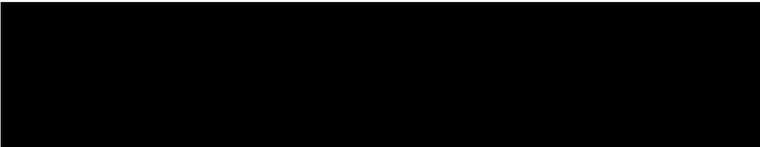
U.S. Department of Homeland Security
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U.S. Citizenship
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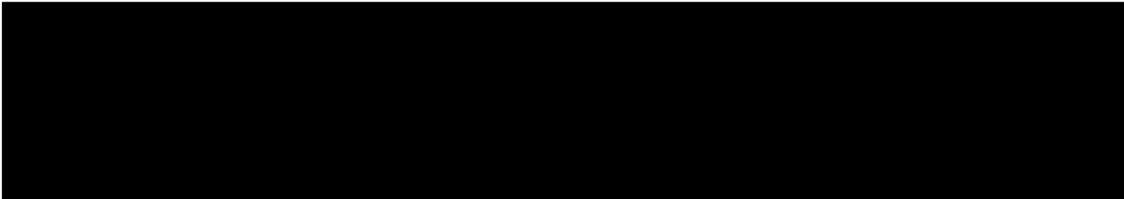
Date: FEB 26 2008

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Cleveland, Ohio and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 procured entry into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse and children.

The District Director 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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated May 11, 2005.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that the applicant had failed to establish extreme hardship to his qualifying relative as necessary for a waiver under 212(i) of the Act. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, an affidavit from the applicant; an affidavit from the applicant's spouse; affidavits from various family members; medical letters and records; school report cards for the applicant's stepson; published country conditions reports; an employment letter for the applicant; earnings statements for the applicant; a psychological evaluation of the applicant's spouse; air fare ticket information; documents regarding Section 8 housing as it pertains to the applicant's spouse; a letter from Professor [REDACTED] Otterbein College; a letter from Fifth Third Bank regarding the applicant's checking account; and copies of photographs. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that on May 9, 2005 the applicant voluntarily admitted during an adjustment of status interview that he was admitted to the United States on a false United Kingdom passport on March 31, 2001 at

New York, New York. *Attorney's brief; Form I-94; copy of passport.* The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act. According to counsel, the applicant was informed at the adjustment of status interview that he was being placed into expedited removal proceedings for having entered through the Visa Waiver Program. *Attorney's brief.* Immigration officials then placed the applicant in detention where he remains. *Id.* On May 11, 2005 the District Director denied the applicant's Form I-601 waiver application. *See District Director's decision, dated May 11, 2005.*

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. The plain language of the statute indicates that hardship that the applicant's children or that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. Any hardship to the applicant's children will be considered only to the extent of its effect on the applicant's spouse. If 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).*

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Nigeria or 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.

If the applicant's spouse travels with the applicant to Nigeria, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States and has lived in Columbus, Ohio her entire life. *See birth certificate and Form G-325A, Biographic Information sheet, for the applicant's spouse.* Neither she nor her children have any ties outside of the United States. *Affidavit from the applicant's spouse, dated May 9, 2005.* On June 2, 2004 the applicant's spouse was in a car accident where she sustained traumatic injuries to her hip and femur bones. *Id.; See also Medical Records, Grant/Riverside Methodist Hospitals, dated June 2, 2004 and Ohio Orthopedic Center of Excellence, dated June 7, 2005.* Medical records show that for months after her injury, the applicant's spouse was still receiving follow-up care. *Dictation Statement from [REDACTED] MD, Ohio Orthopedic Center of Excellence.* As of May 2005, the applicant was still unable to work due to her injuries. *Affidavit from the applicant's spouse, dated May 9, 2005.* The United States Department of State has found that medical facilities in Nigeria are poor, and that diagnostic and treatment equipment is most often poorly maintained and many medicines are unavailable. *Consular Information Sheet, Nigeria, United States Department of State, dated May 3, 2005.* While Nigeria has many well-trained doctors, hospital facilities are generally of poor quality with inadequately trained

nursing staff. *Id.* The applicant's spouse has two children from previous relationships. *See children's birth certificates.* Neither of her children have close relationships with their biological fathers, nor do their biological fathers provide any financial support for them. *Affidavit from the applicant's spouse*, dated May 9, 2005. While the AAO notes that the children are not qualifying relatives in this case, their impact upon the Applicant's spouse will be considered as she is the qualifying relative. Caring for her children in Nigeria places an added burden upon the applicant's spouse. Furthermore, at the time of the filing of the Form I-290B, the applicant was pregnant and expected to deliver in November 2005. *Attorney's brief; Letter from Riverside Methodist Hospital*, dated April 4, 2005; *Copy of sonogram*, dated April 11, 2005. Caring for another child would place additional responsibilities, both financial and emotional, upon the applicant's spouse. Country condition reports note that the national minimum wage in Nigeria did not provide a decent standard of living for a worker and family. *Nigeria, Country Reports on Human Rights Practices – 2004, United States Department of State.* The AAO recognizes that it is unlikely that the applicant's spouse will be able to financially contribute to her family's welfare due to her physical health conditions as well as the addition of a new child. Nigeria is also a country of political instability and human rights abuses. *Id.* When looking at the aforementioned factors, particularly the applicant's spouse's lack of cultural ties to Nigeria, Nigerian country conditions particularly as they apply to medical facilities, the physical health problems of the applicant's spouse, and the addition of a new baby, the AAO finds that the applicant demonstrated that his spouse would suffer extreme hardship if she were to reside in Nigeria.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse has been unable to work since her car accident. *Affidavit from the applicant's spouse*, dated May 9, 2005. Additional health issues raised in the course of her treatment contribute to the applicant's spouse's condition and subsequent inability to work. *Medical Records, Ohio Orthopedic Center of Excellence*, dated June 7, 2005. The applicant is the primary provider of financial support to his family. *Affidavit from the applicant*, dated May 9, 2005; *Affidavit from the applicant's spouse*, dated May 9, 2005; *Affidavit from the applicant's mother*, dated June 6, 2005; *Letter of employment for the applicant and pay stubs.* With his support, the applicant's spouse and his stepchildren were able to move out of Section 8 housing assistance. *Id.*; *See Also termination notice, Columbus Metropolitan Housing Authority*, dated June 3, 2005. The applicant's spouse's family members in the United States are unable to provide her with any financial support. *Id.*; *See Also affidavit from the applicant's mother*, dated June 6, 2005. At the time of the filing of the appeal, the applicant's spouse was pregnant with the applicant's child. *Statement from Riverside Methodist Hospital*, dated April 4, 2005; *Copy of sonogram*, dated April 11, 2005. Having another child creates an additional financial obligation for the applicant and his spouse. Additionally, the record shows the flights from Ohio to Nigeria range in cost from \$1656 to \$1991 per person. *See Orbitz flight availability search, <http://www.orbitz.com/App/ViewFlightSearchResults?z=ghra&r=8b>.* The AAO notes the expenses involved should the applicant's family wish to visit him in Nigeria. As previously noted, the national minimum wage in Nigeria did not provide a decent standard of living for a worker and family. *Nigeria, Country Reports on Human Rights Practices – 2004, United States Department of State.* Even if the applicant were able to earn a salary greater than minimum wage, he would have the added responsibility of supporting a newborn child as well as his spouse who is unable to work due to her physical health condition. Additionally, the applicant is a strong male role model for his stepchildren. *Affidavit from the applicant*, dated May 9, 2005; *affidavit from the applicant's spouse*, dated May 9, 2005. According to Professor Heidi R. Ballard, an expert on the status of the black family in the United States, the applicant's spouse and especially her children, clearly face

massive obstacles and barriers to social and economic progress should they be forced to live without the love, support and continued presence of the applicant. *Statement from [REDACTED] Professor of Sociology and Department Chairperson, Otterbein College, dated June 8, 2005.* Since the applicant has been detained, the applicant's spouse has not been able to sleep or eat and has constant negative thoughts. *Psychological Report from [REDACTED], M.S.Ed., P.C.C., dated May 31, 2005.* The applicant's spouse is experiencing traumatic shock and depression. *Id.* It is recommended that she continue to participate in individual counseling, as she could become even more severely depressed without the help of a professional. *Id.* She is prone to develop Post Traumatic Stress Disorder if the applicant is unable to return home to her and the children. *Id.* When looking at the aforementioned factors, particularly the significant physical and mental health conditions of the applicant's spouse combined with her financial situation, the AAO finds that the applicant demonstrated that his spouse would suffer extreme hardship if she were to reside in Nigeria.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957).*

The adverse factors in the present case are the applicant's prior misrepresentation for which he now seeks a waiver, and periods of unauthorized presence.

The favorable and mitigating factors are the extreme hardship to his spouse if he were refused admission, his long-term and supportive relationship with his wife and U.S. citizen stepchildren, his positive relationships with his family as evidenced by their affidavits, and his lack of a criminal record.

The AAO finds that, although the immigration violations committed by the applicant were serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.