

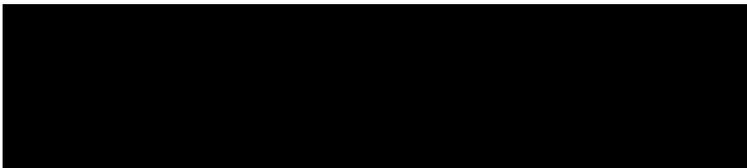
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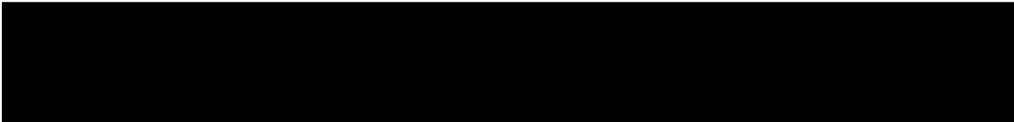


FILE: [Redacted] Office: NEWARK, NJ Date: JAN 02 2008

IN RE: Applicant: [Redacted]

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, Newark, New Jersey, 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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C). The applicant is married to [REDACTED] who is a citizen of the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director denied, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director, dated October 8, 2005.* The applicant submitted a timely appeal.

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.

The record reflects that the applicant was ordered excluded and deported from the United States on March 20, 1989 for attempting to enter the United States on February 25, 1989 with a counterfeit U.S. nonimmigrant business visa. *Form I-110, United States Department of Justice, Immigration and Naturalization Service. Form I-122, United States Department of Justice, Immigration and Naturalization Service.* The record conveys that in December 1998 the applicant applied for entry into the United States with a visitor's visa issued at the United States consulate in Johannesburg, and was inspected and admitted into the country to attend a Baptist Convention in Atlanta, Georgia, as authorized by the terms of the visa. The Biographic Information, Form G-325, reflects that the applicant remained in the United States beyond the authorized period of stay as authorized by the visa.

On appeal, counsel claims that the applicant did not know that he used a fraudulent U.S. visa when he attempted to enter the United States on February 25, 1989. Counsel states that the applicant's next entry into the United States was on December 19, 1998, when he was inspected and admitted into the country to attend a Baptist Convention in Atlanta, Georgia.

The AAO finds that although counsel claims that the applicant did not know that he used a fraudulent U.S. visa on February 25, 1989, the record conveys that an immigration judge had in fact ordered the applicant excluded and deported from the United States for attempting to enter the United States by presenting a counterfeit U.S. nonimmigrant business visa to an immigration inspector. The applicant therefore had an opportunity before the immigration judge to present evidence to establish that he was not inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO finds that the record before it establishes that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO will now address whether a waiver of inadmissibility is 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.

The applicant seeks a waiver of inadmissibility. 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 and his stepdaughter is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and his stepdaughter will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is [REDACTED], the applicant's spouse. 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 contains, in addition to other documents, psychological interviews, affidavits, letters, information about Nigeria, employment letters, earnings statements, a birth certificate, a marriage certificate, a letter from Pediatric and Adolescent Medicine, P.A., and medical records.

The psychological evaluation by [REDACTED], Ph.D., dated July 8, 2005, conveyed that [REDACTED] is experiencing Major Depressive Disorder caused by her fear of separation from her husband. He stated that her symptoms include sleep disturbance, poor appetite, difficulty focusing and concentrating, chronic sadness, crying spells, and loss of sexual libido and that her symptoms will worsen if she loses her husband.

In the psychological evaluation dated September 12, 2005 [REDACTED] indicated that [REDACTED] is experiencing depression caused by the denial of her husband's waiver application. He indicates that [REDACTED] should see her physician for an evaluation for antidepressant medication.

The letter dated July 7, 2005 from [REDACTED] described her prior marriage and her reliance on [REDACTED] in raising her son and daughter.

The letter from the Pediatric and Adolescent Medicine, P.A. relates to [REDACTED] daughter, [REDACTED], who is now 21 years old; it indicated that [REDACTED] was seen for asthma on four occasions since 1987. The AAO notes that the submitted medical records of [REDACTED] do not suggest any serious health problems.

The letters from [REDACTED] son and daughter describe the close relationship they and their mother have with the applicant. The letter from [REDACTED] dated July 23, 2005 indicated that she continues to live with her mother and stepfather.

The World Health Organization report on Nigeria reflects life expectancy at birth for a male in 2002 as 41.3 years and for a female as 41.8 years; the total health expenditure per capita is shown as \$43 in 2002. The record also contains the U.S. Department of State Country Report on Human Rights Practices in Nigeria for 2004.

The AAO has carefully considered all of the evidence in the record in rendering this decision.

Extreme hardship to the qualifying relative 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.

"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).

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

Counsel asserts that the applicant would not be able to financially support his family if they remained in the United States, and would be reduced to living in poverty. *Appeal Brief*, page 8. The AAO finds that the record does not show that Ms. Dennis, who has been employed since 1988 with Brookdale Community College, is unable to financially support herself and her 21-year-old daughter who lives with her. Furthermore, courts in the United States have universally held that economic detriment alone is insufficient to establish extreme hardship. *See, e.g., INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981) (upholding BIA finding that economic loss alone does not establish extreme hardship) and *Mejia-Carrillo v. United States INS*, 656 F.2d 520, 522 (9<sup>th</sup> Cir. 1981) (economic loss alone does not establish extreme hardship, but it is still a fact to consider).

With regard to the psychological evaluation by [REDACTED] although the input of a mental health professional is respected and valuable, the AAO notes that the submitted records by [REDACTED] are based on two interviews between [REDACTED] and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the depressive disorder experienced by [REDACTED]. Moreover, the conclusions reached in the submitted evaluations, being based on two interviews, do not reflect the insight and elaboration commensurate with an established relationship with

thereby rendering [REDACTED]'s findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

U.S. courts 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, U.S. courts have held that the fact that an alien has a U.S. citizen child is not sufficient, in itself, to establish extreme hardship. As stated in *Matter of Correa*, 19 I&N Dec. 130, 134 (BIA 1984), "it is well settled that the birth of children in the United States by itself does not constitute a prima facie case of extreme hardship." In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit in *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977), found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. In *Banks v. INS*, 594 F.2d 760, 762 (9th Cir. 1979), the Ninth Circuit found that an alien who is 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. Thus, the fact that [REDACTED] has a stepdaughter and stepsons who are United States citizens is not sufficient, in itself, to establish extreme hardship.

Moreover, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the 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 reflects that [REDACTED] is 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 [REDACTED], if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion 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 certainly will be endured by the applicant's wife, is unusual or beyond that which is normally to be expected upon deportation or exclusion. See *Hassan*, *Shooshtary*, *Perez*, *Sullivan*, *supra*.

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

The conditions in Nigeria, the country where [REDACTED] would live if she joins her husband, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

The Country Report on Human Rights Practices in Nigeria for 2004 and the World Health Organization report on Nigeria are insufficient to establish extreme hardship to [REDACTED] if she were to join the applicant in Nigeria. The human rights report describes the human rights situation in Nigeria; however, the applicant presented no evidence of specific incidents of threats or violence directed against him or his family who live in Nigeria. The World Health Organization report describes life expectancy at birth in Nigeria and the total health expenditure per capita. A life expectancy calculation provides an estimated life expectancy for a population, but is not definitive in determining the length of a specific individual's life. Although the per capita expenditure on health care in Nigeria is low, this does not provide information about the actual availability of medical services in Nigeria. 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)).

Counsel states that [REDACTED]' life would be at risk if she were to join her mother in Nigeria on account of her asthma and the inferior level of health care available in Nigeria as demonstrated by the per capital health expenditure. *Appeal Brief, page 7*. The AAO finds that the submitted documentation does not convey that [REDACTED] asthma is a serious health condition; she was seen for asthma on only four occasions over a period of 16 years. Furthermore, no information has been presented to establish that treatment for asthma is unavailable in Nigeria.

With regard to the level of health care in Nigeria, the BIA in *Matter of Correa*, 19 I&N Dec. 130, 134 (BIA 1984), found that "second class" medical facilities in foreign countries are not per se extreme hardship.

With regard to the employment in Nigeria as described in the Country Report on Human Rights Practices in Nigeria for 2004, U.S. court decisions have held that the difficulty an applicant may experience in securing employment, and the hardships that flow from this 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); *Matter of Pilch*, 21 I&N Dec. 627, 631 (BIA 1996) (loss of current employment, inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, or cultural readjustment do not constitute extreme hardship); and *Pelaez v. INS*, 513 F.2d 303 (5<sup>th</sup> Cir. 1975) (difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship).

Counsel indicates that [REDACTED] children, grandchild, and extended family are in the United States and that she has never been to Nigeria. *Appeal Brief, page 7*. The AAO recognizes that [REDACTED] adjustment to the culture and environment in Nigeria would be difficult; but these difficulties will be mitigated by the moral support of her husband and in-laws, which are her family ties to Nigeria. The AAO notes that the official language in Nigeria is English.

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 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, 8 U.S.C. § 1182(i), 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.