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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

Office: LOS ANGELES (SANTA ANA)

Date:

JUL 24 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:

[Redacted]

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, Los Angeles, California, and 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 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 willfully misrepresenting her identification by presenting false birth certificates and misrepresenting her marital status in order to obtain a benefit under the Act. The record indicates that the applicant is married to a naturalized United States citizen. She is seeking 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 her United States citizen husband and children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on her husband and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated April 7, 2006.

On appeal, the applicant, through counsel, claims that the applicant's family will suffer extreme hardship if she were removed from the United States. *Appeal Brief attached to Form I-290B*, filed May 4, 2006.

The record includes, but is not limited to, counsel's brief, affidavits from the applicant and her husband, marriage certificates for the applicant's first and fourth husband, divorce decrees for the applicant's first, second, and third husband, two different birth certificates for the applicant¹, and U.S. Individual Income Tax Returns for the applicant and her husband. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) 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.

....

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

¹ One birth certificate indicated that her name was [REDACTED], born June 16, 1963 to [REDACTED] and [REDACTED] and the other noted the name [REDACTED], born January 16, 1963 to [REDACTED] and [REDACTED]

- (i) (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 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 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 contains several references to the hardship that the applicant’s children would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant’s husband is the only qualifying relative, and hardship to the applicant’s children will not be considered, except as it may cause hardship to the applicant’s spouse.

In the present application, the record indicates that on September 3, 1987, the applicant entered the United States with her first husband on a B-2 nonimmigrant visa. On June 9, 1989, the applicant married her second husband. On September 11, 1989, the applicant’s second husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On the same day, the applicant filed an Application for Permanent Residence (Form I-485) and a Form I-601², claiming she misrepresented herself as married to obtain a visa to enter the United States when she was never married. On December 19, 1989, the applicant’s Form I-130 was denied because of lack of persecution. On the same day, the applicant’s Form I-485 was denied. On an unknown date, the applicant departed the United States under advance parole. The applicant reentered the United States On May 2, 1992. On June 8, 1993, the applicant divorced her first husband. On June 9, 1993, the applicant divorced her second husband. On May 7, 1997, the applicant divorced her third husband. On April 11, 2002, the applicant married her fourth husband, a naturalized United States citizen. On October 24, 2002, the applicant’s fourth husband filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed another Form I-485. On July 18, 2005, the applicant filed a Form I-601. On April 7, 2006, the District Director denied the applicant’s Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative.

Counsel states that “[i]n the Service’s request for a waiver of inadmissibility, issued April 25, 2005, the Service states that [the applicant] is inadmissible because she failed to reveal her 1986 marriage to [REDACTED] on her application for adjustment of status filed in 1989. However, in its decision denying the waiver application, the Service claims that she is inadmissible for having misrepresented herself at the time of her entry into the United States in 1987, by stating that she was married when she was not. Clearly, the Service’s alleged grounds of inadmissibility are conflicting, such that each of its positions, if accepted as true, cancels the other...If the applicant is to respond to the Service’s latest finding of inadmissibility, which is that

² The AAO notes that with the Form I-130, Form I-485, and Form I-601, the applicant submitted the birth certificate identifying herself as ‘[REDACTED],’

she misrepresented herself as married when, in fact, she was single at the time of her entry, it is incumbent to note that the applicant herself has never stated in any of her interviews, nor in her submissions to the Service that she was single at the time of her entry and that she misrepresented herself as married.” *Appeal Brief attached to Form I-290B, supra*. The AAO notes that on the applicant’s Form I-601, filed on September 11, 1989, the applicant stated “[she] represented [herself] as a married person to the Consul in Lagos, Nigeria to obtain a visitor’s visa for the United States when, in fact, [she] [has] never been married before.” *Form I-601, filed September 11, 1989*. The applicant signed the Form I-601 attesting to the information in the application. She later indicated that she had been married to her first husband in a traditional ceremony and subsequently obtained a divorce from her first husband. If she were, in fact, married, it is unclear why she said that she misrepresented that fact to the consul in Lagos. If she was not married, it is not clear how she was able to obtain a divorce for a marriage that didn’t exist. Therefore, any inconsistencies or conflicts were the result of the applicant’s submissions, not the fault of the Service.

Counsel states that “[t]he applicant concedes that a birth certificate bearing false information may have been included with her previous application for adjustment of status in error, and not in any willful attempt to misrepresent her identity....[The applicant] has said that she never intended to misrepresent her identity and that she had no reason to do so. The Service should have come to the same conclusion, given that she never misrepresented her identity on any of the applications, petitions or supporting documentation filed with the Service.” *Appeal Brief attached to Form I-290B, supra*. The applicant used what she claims to be the false birth certificate in the name of [REDACTED] on September 11, 1989, when she filed her initial Form I-130, Form I-485, Biographic Form G-325, and Form I-601. All of these forms were signed under penalty of perjury by the applicant. Additionally, the AAO notes that on the applicant’s initial Form I-485, filed on September 11, 1989, the applicant listed two sisters and a brother who also had the “[REDACTED]” last name. Clearly, the applicant intended to misrepresent her identity. Doubt cast on any aspect of the applicant’s submissions may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The AAO finds that the applicant willfully misrepresented material facts in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C) of the Act.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 the alien herself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant’s United States citizen 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme

hardship to a qualifying relative. 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.

Counsel claims that the applicant's husband will suffer extreme hardship if the applicant is removed from the United States. *See Appeal Brief attached to Form I-290B, supra.* The applicant's husband states the applicant "is a wonderful wife and terrific mother." *Affidavit from [REDACTED]*, dated July 14, 2005. He claims that if the applicant "is forced to return to Nigeria, the children and [him] would have no choice but to follow her." *Id.* The applicant has not established that the applicant's children, who are three years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of Nigeria.³ The applicant's husband states that he "do[es] not believe that [they] could earn enough income to support [their] family with the limited skills that [they] have and lack of ties." *Id.* The AAO notes that the applicant's husband is a native of Nigeria, who spent his formative years in Nigeria, and it has not been established that he has no family ties in Nigeria. Additionally, it has not been established that the applicant's husband has no transferable skills that would aid him in obtaining a job in Nigeria. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he accompanied her to Nigeria.

In addition, the applicant does not establish extreme hardship to her spouse if he remains in the United States, maintaining his employment and access to education for their children. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's husband states that both he and the applicant "work and contribute to the payment of the household bills." *Affidavit from [REDACTED], supra.* Aside from tax documents, there is nothing in the record to verify the income of either the applicant or her spouse or any documentation noting expenses other than some mortgage and insurance documents. The record also fails to demonstrate that the applicant will be unable to contribute to her family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The applicant's husband faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the Board has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In

³ The AAO notes that the applicant claims to have an older son; however, the record does not contain a birth certificate for him.

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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 recognizes that the applicant's lawful permanent resident husband will endure hardship as a result of separation from the applicant. However, his situation if he 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.

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 inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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.