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U.S. Citizenship
and Immigration
Services

flr

[Redacted]

FILE: [Redacted] Office: LOS ANGELES, CA Date: **MAR 26 2008**

IN RE: [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 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 admission into the United States by fraud or willful misrepresentation in October 2000. The applicant is married to a U.S. citizen and has four 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 May 12, 2005.

On appeal, the applicant's spouse, [REDACTED] states that the applicant provides her with both emotional and financial support, and that she and her children need him. [REDACTED] contends that it would constitute an extreme hardship for her to accompany the applicant to Nigeria or to remain in the United States following his removal. *Letter accompanying the Form I-290B*, dated May 11, 2005.

The record indicates that on April 30, 2001, the applicant filed the Form I-485, Application to Register Permanent Resident or Adjust Status, based on the Form I-130, Petition for Alien Relative, filed by Ms. [REDACTED]. At his adjustment interview, the applicant testified under oath that he entered the United States in October 2000 by presenting a passport belonging to another individual. Accordingly, he is inadmissible to the United States pursuant to 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.

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 qualifying relative is [REDACTED] the applicant's spouse. Hardship

experienced by the applicant or his children as a result of separation will not be considered in this section 212(i) waiver proceeding, except as it affects [REDACTED]. 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 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 record includes the following evidence in support of the applicant’s claim that [REDACTED] would suffer extreme hardship if he were to be removed from the United States: statements from the applicant and Ms. [REDACTED] notices from the Child Support Services Department, County of Los Angeles documenting the failure of [REDACTED]’s former spouse to pay child support; a letter of support from the pastor of the applicant’s church; photographs of [REDACTED] with the applicant and their three daughters and a photograph of [REDACTED] and the applicant’s new born fourth child; evidence of the incorporation of [REDACTED] and the applicant’s restaurant business; medical documentation relating to the applicant’s health and country conditions information on health care in Nigeria.

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 her statements, [REDACTED] asserts that all her family live in California or elsewhere in the United States and that she is unfamiliar with Nigerian customs and food. Relocating to Nigeria [REDACTED] states will not only be extremely difficult for her, but very hard on their children as they will have to adapt to a country with a culture, language and traditions they do not understand. She also states that she will lose custody of her children if she relocates to Nigeria because their father will not let them leave the United States and that this will be devastating for her. [REDACTED] *Statements*, one undated and one dated May 11, 2005

The AAO notes that both the applicant and [REDACTED] report that he suffers from a peptic ulcer and that he will not be able to find adequate medical care in Nigeria. [REDACTED] states that while the peptic ulcer is treatable in the United States, the applicant might lose his life in Nigeria. *Applicant's and [REDACTED] Statements*, undated. In support of these statements, the applicant has submitted a medically excused absence form from the St. Nazarene Medical Clinic in Long Beach, California that indicates he suffers from gastroesophageal reflux disease (GERD) rather than a peptic ulcer. A July 28, 1997 article from *The Source* reports on the significant short comings in Nigeria's health care sector.

While the AAO notes the concerns expressed by the applicant and [REDACTED] it does not find them to establish that she would be subject to extreme hardship were she to move to Nigeria with the applicant. Ms. [REDACTED] has asserted that a move to Nigeria would be devastating for her because she would lose custody of her children to her former husband who is the birth father of her three oldest children. The record, however, offers no evidence in support of this claim. The 2003 judgment establishing the parental obligations of Ms. [REDACTED] and her former spouse does not indicate the legal rights of the children's father and, therefore, whether he would be able to prevent [REDACTED] from removing them from the United States. *Judgment Regarding Parental Obligations*, filed September 15, 2003. The applicant has also failed to offer any documentation that [REDACTED] former husband, even if legally able to do so, would oppose her removing their children from the United States. Going on record without supporting documentary evidence 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)).

The AAO also notes the applicant's claims of medical hardship and the difficulties that would face Ms. [REDACTED] children were their father to allow them to relocate to Nigeria, but finds these claims insufficient to prove extreme hardship in the current case. As previously noted, neither the applicant nor [REDACTED] children are qualifying relatives and the hardships they may experience as a result of relocation are not considered in Form I-601 waiver proceedings, except to the extent that they affect the qualifying relative. The record does not demonstrate how the hardships claimed with regard to the applicant and [REDACTED] children will result in extreme hardship for her. Accordingly, they have not been considered in the current proceeding.

The second part of the analysis requires the applicant to establish extreme hardship in the event that Ms. [REDACTED] remains in the United States following his removal. In her statements, [REDACTED] states that she would be emotionally devastated if she were to be separated from the applicant and that it would also result in extreme financial hardship for her family. She reports that she and the applicant own a restaurant business and that he takes care of many of the chores related to that business, including driving the food truck, lifting

heavy things, doing the paperwork and handling other business transactions. [REDACTED] states that the business is new and that she cannot afford to hire someone to replace the applicant. His removal, Ms. [REDACTED] contends, will result in the loss of their business, thereby creating create financial hardship for her and their children. [REDACTED] Statements, one undated and one dated May 11, 2005.

Although the record contains documentation that establishes that the applicant and [REDACTED] own a café in Los Angeles, California, it does not demonstrate that [REDACTED] would be unable to operate the café in the applicant's absence. The applicant has failed to provide any financial evidence to prove that [REDACTED] would be unable to afford to hire someone who could serve in his stead or that having to pay for assistance would result in the loss of their business. In the absence of documentary evidence, [REDACTED] claims are 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)). The AAO also notes that the record does not establish, nor does the applicant claim that he would be unable to obtain employment upon return to Nigeria that would allow him to assist [REDACTED] in meeting their financial obligations. Moreover, although [REDACTED] states that she would be emotionally devastated were she to remain in the United States following the applicant's removal, the record contains no evidence in the form of a medical or psychological evaluation to demonstrate that the denial of the applicant's waiver request would have a disproportionate emotional impact on her. Emotional hardship caused by severing family ties is a common result of deportation and does not constitute extreme hardship. *Matter of Pilch, supra*

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 separation 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.