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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: [REDACTED] Office: CHICAGO DISTRICT OFFICE Date **MAY 12 2008**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h)
of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

The applicant, a citizen of Nigeria, was found inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the spouse and father of United States citizens, and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his family.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on his wife and daughter and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

Section 212(a)(2) of the Act provides, in pertinent part:

(A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

* * *

(I) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

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

(h) The Attorney General [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

* * *

(1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

Regarding the applicant's ground of inadmissibility, the record indicates that he pleaded guilty to check counterfeiting, a crime involving moral turpitude on January 16, 2002. He was sentenced to eight months of home incarceration, three years of probation, and \$195,100 in restitution. The applicant does not dispute that this crime involved moral turpitude on his part.

The first issue to consider is whether the applicant qualifies for the "petty offense exception" at section 212(a)(2)(A)(ii)(I), as claimed by counsel. If the applicant qualifies under the petty offense exception, no waiver is necessary, as the applicant would not be inadmissible. If the applicant does not qualify under the petty offense exception, and is therefore inadmissible and in need of a waiver, the AAO considers whether extreme hardship would accrue to a qualifying relative in the event the waiver application is denied.

An applicant qualifies under the petty offense exception if: (1) the applicant committed only one crime; (2) the maximum penalty possible for the crime of which the applicant was convicted (or admits having committed, or of which the acts applicant admits having committed constituted the essential elements of) did not exceed imprisonment for one year; and (3) if the applicant was convicted, the applicant was not sentenced to a term of imprisonment in excess of six months, regardless of the extent to which the sentence was ultimately executed.

The regulation at 8 U.S.C. § 513(a), the regulation under which the applicant was convicted, states the following:

Whoever makes, utters or possesses a counterfeited security of a State or a political subdivision thereof or of an organization, or whoever makes, utters or possesses a forged security of a State or political subdivision thereof or of an organization, with intent to deceive another person, organization, or government shall be fined under this title or imprisoned for not more than ten years, or both.

The applicant does not qualify under the petty offense exception, as the maximum penalty possible for the crime of which the applicant was convicted was ten years, a period in excess of the one year maximum permitted by section 212(a)(2)(A)(ii)(I) of the Act. He is therefore inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act. Accordingly, the AAO will address the issue of whether the applicant's inadmissibility would impose extreme hardship on a qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion and grant the waiver.

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 BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

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 BIA held in *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

The applicant's wife is a thirty-four year citizen of the United States. She and the applicant have been married since September 26, 2003 and have a six-year-old daughter, also a citizen of the United States, together.

In her November 8, 2004 affidavit, the applicant's wife states that she and the applicant have been living together since 1997; that separation from the applicant would cause extreme hardship; that the applicant and the couple's daughter have a close and loving relationship; that separation from the applicant would test the marriage; that she would be the sole financial provider for their daughter if the applicant relocates to Nigeria; that the current contribution she makes toward household expenses is minimal; that she would not be able to meet her and her daughter's expenses; that her job does not provide health insurance; that she would be unable to find a job in Nigeria if she accompanied the applicant; and that she and her daughter would be exposed to poverty and disease if they relocate to Nigeria.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "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."); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

As noted previously, the applicant is required to demonstrate that either his wife or daughter would face extreme hardship in the event the applicant is required to return to Nigeria, regardless of whether they join him in Nigeria or remain in Illinois without him. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists.

The AAO finds that the applicant's daughter would face extreme hardship if she were to relocate to Nigeria with the applicant. She has resided in the United States since birth and, according to the applicant's wife, does not

speaking any of the languages spoken in Nigeria. As such, she would likely struggle in the Nigerian education system. The record indicates that, as a six-year-old American citizen, she is likely fully integrated into the United States lifestyle and education system. In *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001), the BIA found that a fifteen-year-old child who had lived her entire life in the United States, was completely integrated into the American lifestyle, and was not fluent in the Chinese language, would suffer extreme hardship if she relocated to Taiwan. The AAO finds that a similar fact pattern has been established in this case.

However, 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 wife or their daughter would face extreme hardship if the applicant returns to Nigeria without them. The record does not establish that they would face greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse or parent is removed from the United States. No evidence was submitted or claims made that they would experience financial, emotional, or medical hardship that would rise to the level of "extreme" as contemplated by statute and case law. The costs, both financial and emotional, of separation as outlined in the applicant's wife's November 8, 2004 affidavit are faced by many in the applicant's wife's and daughter's situations, and the record fails to establish that the hardships they would face would be greater than those faced by others. Although CIS is not insensitive to their situation, the financial strain of visiting the applicant in Nigeria, the stress associated with maintaining two separate households, and the emotional and financial hardship of separation are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law.

In nearly every qualifying relationship, there is a deep level of affection and a certain amount of emotional and social interdependence. While the prospect of separation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior 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 INA § 212(i), be above and beyond the normal, expected hardship involved in such cases. In adjudicating this appeal, the AAO finds that the record fails to demonstrate that the applicant's wife and daughter would suffer hardship beyond that normally expected upon the removal of a spouse or parent.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that his United States citizen wife or daughter would suffer hardship that is unusual or beyond that normally expected upon the removal of a spouse or parent. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

ORDER: The appeal is dismissed. The waiver application is denied.