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

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FILE: [REDACTED] Office: BALTIMORE, MD Date: **NOV 04 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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) was denied by the District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the Form I-601 will be approved.

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 attempting to procure admission into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of her ground of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director determined that the applicant had failed to establish her U.S. citizen child would suffer extreme hardship if the applicant were denied admission into the United States. The Form I-601 was denied accordingly.

On appeal the applicant asserts, through counsel, that because she is applying for adjustment of her status under Violence Against Women Act (VAWA) provisions, the district director should have analyzed the extreme hardship that both the applicant's U.S. citizen son and the applicant would suffer if the applicant were denied admission into the United States. The applicant asserts further that, in approving the applicant's VAWA petition, CIS determined that the applicant and her son would suffer extreme hardship if they were removed from the United States. The applicant additionally indicates that the evidence in the record establishes that the applicant and her son would experience extreme hardship if they had to live in Nigeria. The applicant asserts that Congressional intent and public policy encourage a liberal exercise of discretion in VAWA adjustment of status cases. The applicant asserts further, through counsel, that she qualifies for consideration under section 245(i) of the Act, 8 U.S.C. § 1255(i) because she filed a Form I-130, Petition for Alien Relative on January 14, 1998, that was approved and remains valid.

Section 245(i) of the Act permits an alien to adjust his or her status to that of a lawful permanent resident if the applicant was the beneficiary of a pre-April 30, 2001 immigrant visa or labor certification which was approvable when filed pursuant to 8 C.F.R. § 245.10(a)(1)(i)(A). A properly filed application is one that is meritorious and non-frivolous. 8 C.F.R. § 245.10(a)(3).

Section 245 of the Act, states in pertinent part that:

(a) The status of an alien who was inspected and admitted or paroled into the United States or the status of any other alien having an approved petition for classification under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of section 204(a)(1) may be adjusted by the Attorney General (now Secretary, Homeland Security, "Secretary"), in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if:

(1) the alien makes an application for such adjustment,

(2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and

(3) an immigrant visa is immediately available to him at the time his application is filed.

....

(c) Other than an alien having an approved petition for classification as a VAWA self-petitioner, subsection (a) shall not be applicable to (1) an alien crewman; (2) 1/ subject to subsection (k), an alien (other than an immediate relative as defined in section 201(b) or a special immigrant described in section 101(a)(27)(H), (I), (J), or (K)) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States; (3) any alien admitted in transit without visa under section 212(d)(4)(C); (4) an alien (other than an immediate relative as defined in section 201(b)) who was admitted as a nonimmigrant visitor without a visa under section 212(l) or section 217; (5) an alien who was admitted as a nonimmigrant described in section 101(a)(15)(S); (6) an alien who is deportable under section 237(a)(4)(B); (7) 2/ any alien who seeks adjustment of status to that of an immigrant under section 203(b) and is not in a lawful nonimmigrant status; or (8) any alien who was employed while the alien was an unauthorized alien, as defined in section 274A(h)(3), or who has otherwise violated the terms of a nonimmigrant visa.

....

(i) (1) Notwithstanding the provisions of subsections (a) and (c) of this section, an alien physically present in the United States--

(A) who--

(i) entered the United States without inspection; or

(ii) is within one of the classes enumerated in subsection (c) of this section;

(B) who is the beneficiary (including a spouse or child of the principal alien, if eligible to receive a visa under section 203(d) of--

(i) a petition for classification under section 204 that was filed with the Attorney General [Secretary] on or before April 30, 2001. . . .

.....

(2) Upon receipt of such an application and the sum hereby required, the Attorney General [Secretary] may adjust the status of the alien to that of an alien lawfully admitted for permanent residence if-

(A) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence; and

(B) an immigrant visa is immediately available to the alien at the time the application is filed.

An alien who is the beneficiary of a pre-January 15, 1998, Form I-130 that was approvable when filed, may use the petition to adjust status even if the basis for the adjustment is a different petition filed after January 14, 1998. *See* April 14, 1999, Immigration and Naturalization Service Office of Policy and Programs Memorandum, HQ 70/23 1-P, HQ 70/8-P. In the present matter, the record contains the applicant's Form I-360, VAWA-based petition approved on October 28, 2002. The record additionally contains the applicant's Form I-130 petition for a family-based immigrant visa approved on August 19, 1996. The applicant therefore meets the pre-April 30, 2001 immigrant visa filing requirements contained in section 245(i) of the Act. The record also contains a Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) and Supplement A to Form I-485, filed by the applicant on September 24, 1996. The Supplement A to Form I-485 reflects that the applicant was required to pay a \$650.00 fee for consideration under section 245(i) of the Act. The applicant's Form I-145 and Supplement A were processed by the Immigration and Naturalization Service, and there is no indication that the section 245(i) of the Act based fee was not paid. The applicant has therefore also met the fee requirements set forth in section 245(i) of the Act.

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

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 in 1995, the applicant sought admission into the United States by using a fraudulent document. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i)(1) of the Act provides that:

The Attorney General [now Secretary, Department 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 **or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.**

(Emphasis added.) In the present matter, the applicant has an approved Form I-360 VAWA self-petition. The applicant and her U.S. citizen son are therefore qualifying family members for section 212(i) of the Act purposes.

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 that it deemed relevant in determining whether an alien had established extreme hardship. The factors included 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. The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

"Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996.) Court decisions have repeatedly held that the common results of deportation or exclusion [now, removal or inadmissibility] are insufficient to prove extreme hardship. *See Perez v. INS, supra. See also, Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

The applicant indicates, through counsel, that in approving her Form I-360 VAWA-based application, CIS found that she and her son would experience extreme hardship if they were removed from the United States. In support of her assertion, the applicant refers to 8 C.F.R. § 204.2(c)(1) provisions.

The regulation states at 8 C.F.R. § 204.2(c)(1)(i) that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immediate relative or as a preference immigrant if he or she:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
- (C) Is residing in the United States;
- (D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation provides at 8 C.F.R. § 204.2(c)(viii) that:

The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation would cause extreme hardship.

The record reflects that CIS approved the applicant's Form I-360, VAWA based petition on October 28, 2002. In approving Form I-360, CIS necessarily found that the applicant met all of the requirements set forth in 8 C.F.R. § 204.2(c)(1)(i), including the specific requirement contained in 8 C.F.R. § 204.2(c)(1)(i)(G) that she establish deportation would result in extreme hardship to herself or her child.

The record additionally contains the following evidence relating to the applicant's waiver of inadmissibility, extreme hardship claim:

A birth certificate reflecting that the applicant's son was born in New York on April 11, 1997.

A letter signed by the applicant on July 12, 2006, stating that her son was born in the United States and that he is a U.S. citizen. She indicates that she does not know where her son's father is, and that she is the sole caretaker of her son. As such, her son would have to go to Nigeria if she were denied admission into the United States. The applicant states that her son has never lived in Nigeria, and that her Nigerian parents are deceased. She states that her son does not know anyone in Nigeria, does not understand any of the native languages in Nigeria, and it would be difficult for him to socialize and function in Nigeria on a daily basis. The applicant indicates that her son presently receives a good education in the U.S., and that his life and education would be seriously disrupted if he moved to Nigeria where the educational system would be poor. The applicant's son also receives one-on-one reading assistance with

a school reading specialist, which would be unavailable in Nigeria. The applicant states that she does not receive child support for her son, and she has no one to help support her in Nigeria. She fears that she would be unable to find a good-paying job in Nigeria, and that she would have to start all over again to find an economic means of surviving. The applicant additionally states that she fears she and her son would have inadequate or no medical services in Nigeria if they became sick. The applicant states that her son was emotionally traumatized by the physical abuse he witnessed his father inflicting on her while she was married, and she fears a forced move to Nigeria would inflict further emotional trauma on her son. The applicant also fears the possibility of physical and psychological abuse from her ex-husband or his family in Nigeria, and she fears that her son could be targeted for harm by groups that are anti-American. The applicant states that she has lived in the U.S. since 1996, that she and her son have close ties to this country, and that she is able to provide for her son in this country.

2005-2006, school documents reflecting that the applicant's son had some discipline problems (fighting) and performed below grade level in several areas. The documents reflect further her son's improvements with the reading specialist.

Several articles written by international organizations on domestic violence against women in Nigeria and the lack of governmental protection.

Upon review of the totality of the evidence, the AAO finds the applicant has established that she and her son would suffer extreme hardship if the applicant were denied admission into the United States. The AAO notes that in approving the applicant's Form I-360 petition in October 2002, CIS determined that the applicant and her son would suffer extreme hardship upon deportation to Nigeria. The AAO finds further that the evidence establishes that her son would suffer emotional, educational and financial hardship beyond that normally experienced upon the removal of a family member, if the applicant were denied admission into the United States. The applicant established that she is the main caretaker for her son and that her son would have no immediate family member to care for him if he remained in the United States without the applicant. The applicant's son would therefore also move to Nigeria if the applicant were denied admission to the United States. The applicant reasonably established that her son was affected by the abuse he witnessed his father inflicting on his mother, and she reasonably established that her son would suffer additional emotional trauma upon relocation to Nigeria, as he has never lived in Nigeria, he does not speak the local languages or have family in Nigeria, and his economic situation might be worse in Nigeria. Additionally, the applicant established that her son's education would suffer, as her son requires educational assistance unavailable in Nigeria, in order to perform at grade level in school. Upon review of the totality of the evidence, the applicant has therefore established that her husband would suffer extreme hardship if the applicant's Form I-601 were denied. Accordingly, the applicant has satisfied the extreme hardship prong of section 212(i) of the Act.

Under section 212(i) of the Act, a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, CIS assesses whether an exercise of discretion is warranted.

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. *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). In evaluating whether relief is warranted in the exercise of discretion, the factors adverse to the alien may include the nature and underlying circumstances of the removal ground at issue:

[T]he presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives). *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996.)

The AAO must:

[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Matter of Mendez-Moralez*. at 300. (Citations omitted.)

The AAO finds, upon review of the evidence, that the applicant has established that she merits a waiver of inadmissibility as a matter of discretion. The factors for a favorable exercise of discretion in the present case include:

The emotional, financial and educational hardship the applicant's son would suffer if he and the applicant moved to Nigeria; the fact that the applicant has been in the United States for over ten years, and she has a young U.S. citizen child; the applicant's history of stable employment and financial responsibility to her family and household; the fact that the applicant does not have a criminal record; and the lack of other evidence of bad character.

The unfavorable factor in the present matter is:

The applicant's attempt to procure admission into the United States by using a fraudulent document in 1995.

The AAO finds that, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

Section 291 of the Act provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has met her burden in the present matter. The appeal will therefore be sustained and the Form I-601 application will be approved.

ORDER: The appeal is sustained. The application is approved.