

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

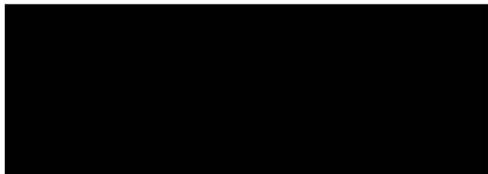
PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090
Mail Stop 2090



**U.S. Citizenship
and Immigration
Services**

H2



FILE:

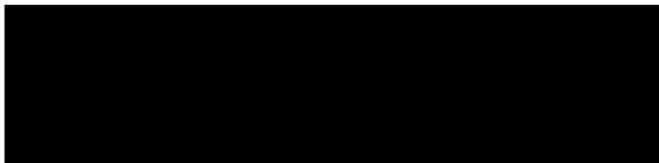
Office: CHICAGO

Date: **NOV 24 2008**

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i), 8 U.S.C. section 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 "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois and 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 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 to the United States by fraud or willful misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (I-130) filed by his U.S. citizen spouse and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his spouse.

The record reflects that the applicant presented a British passport bearing the name _____ and was admitted to the United States on August 14, 2001 under the visa waiver program. The applicant and his spouse, _____, were married on April 5, 2003 in the United States. The applicant's spouse filed the Form I-130 petition on August 22, 2003. The petition was approved on November 2, 2004. The applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) and an Application for Waiver of Grounds of Inadmissibility (Form I-601) on January 11, 2005.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of District Director*, dated November 4, 2005.

On appeal, counsel contends that the reviewing officer erred in ignoring the expert testimony submitted by the applicant to show the psychological impact of separation on the applicant's spouse. Counsel also asserts that the district director failed to give proper weight and consideration to the various hardship factors set forth by the applicant's spouse, such as her complete lack of familiarity with and family ties to Nigeria, her inability to find employment and housing in Nigeria, and her separation from her family in the United States should she relocate to Nigeria. Counsel contends that district director failed to consider the cumulative emotional, economic, physical and psychological impact on the applicant's spouse if the waiver application is denied.

The record includes, among other documents, statements from the applicant; statements from the applicant's spouse; a letter from the applicant's spouse's mother; a letter from _____, the applicant's spouse's aunt; a psychosocial assessment from _____, licensed clinical social worker; joint tax returns and other tax documents for the applicant and his spouse for the years 2003- 2004; an unsigned letter from the applicant's employer, Labo Motor's; a letter from _____, owner of _____, the applicant's spouse's employer; mortgage and other documents relating to the applicant's house; documents relating to the applicant's studies at the Public Chauffeur Training Institute; health, automobile and life insurance documents; family photographs; and letters from acquaintances. The entire record was considered in rendering a decision on the 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.

As stated above, the applicant presented a British passport bearing the name [REDACTED] and was admitted to the United States on August 14, 2001 under the visa waiver program. The applicant has not disputed that he is inadmissible under section 212(a)(6)(C) of the Act.

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.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The only qualifying relative is the applicant's U.S. citizen spouse. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 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 applicant 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.

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. courts have stated, “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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

In his statement, the applicant asserts that “the thought of separation” has caused the applicant’s spouse’s health to worsen. He states that he has no employment opportunities and no place to live in Nigeria. He asserts that Nigeria is unsafe for women, and that his spouse would not have access to the medical attention she needs for her irregular menstrual cycle. He further states that the applicant’s spouse is needed in the United States to care for her ill mother and elderly grandmother.

In her statement, the applicant states that she doesn’t know if she’ll “be able to make it without [the applicant].” She also asserts that her mother is a cancer patient who needs her assistance, and that the applicant helps in providing his assistance. The applicant’s spouse lists her expenses and states that she does not know how she can meet these financial obligations in the applicant’s absence. She asserts that she has recently had two miscarriages related to the stress about possible separation from the applicant. She states that she does not want to leave her sick mother and her grandmother in the United States, but that she does not know what to do if the applicant has to return to Nigeria.

In her assessment, [REDACTED] states that she interviewed the applicant’s spouse on two occasions. [REDACTED] diagnoses the applicant’s spouse with generalized anxiety disorder and indicates that she experiences severe stress as a consequence of the following:

[the applicant’s] “immigration problems; delay in [the applicant’s] obtaining work permit and financial pressures; death of childhood friend from lung cancer; mother’s and grandmother’s having cancer; surgery to remove ovarian cyst; estrangement from father; father’s lifestyle; conflict with younger sister; dropping out of college.”

[REDACTED] further assigns the applicant’s spouse a score of 55 on the “Global Assessment of Functioning” scale, and states that “a score in the 60’s is considered fairly good, whereas one in the 50’s indicates great difficulty functioning, significant depression or anxiety, etc.”

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 spouse faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO acknowledges that the applicant's spouse will experience emotional hardship if she chooses to remain in the United States, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter from [REDACTED] is based on only two interviews with the applicant's spouse. 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 generalized anxiety disorder allegedly suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on such limited experience, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist or psychiatrist, thereby rendering [REDACTED]'s findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The applicant has also not submitted any documentary evidence of the applicant's spouse's miscarriages or other medical ailments, or of any medical condition suffered by the applicant's spouse's mother or grandmother. There is also insufficient evidence showing that the applicant's spouse will suffer financial hardship in the applicant's absence. The applicant has submitted no documentation showing his earnings (the tax documents show earnings of the applicant's spouse only), and the letter from his employer is unsigned and does not list the applicant's salary. The applicant's spouse asserts that she will suffer financial hardship in the applicant's absence, but she does not state the amount of the applicant's contribution to the couple's finances. 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)).

The AAO does not dispute that the applicant's spouse experiences stress and anxiety that may increase if she is separated from the applicant, but concludes that the hardship described by the applicant's spouse, and as demonstrated by the other evidence in the record, is the common result of removal or inadmissibility. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

The AAO acknowledges that the applicant's spouse would suffer extreme hardship if she relocated to Nigeria. The evidence shows that the applicant is a native of the United States and would be forced to abandon her employment and her immediate family if she left the United States. The evidence further reflects that the applicant does not speak the native language of her husband's family and is estranged from extended relatives in Nigeria. Nevertheless, the applicant has failed to demonstrate that his spouse would suffer extreme hardship if she remains in the United States.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. 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 rests 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.