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U.S. Citizenship
and Immigration
Services

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FILE:

Office: ACCRA, GHANA

Date: NOV 28 2008

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1182(h), Section 212(i) of the Act, 8 U.S.C. § 1182(i), and Section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

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 Officer in Charge, Accra, Ghana, 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 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 fraud or willfully misrepresenting a material fact; section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii) for falsely claiming U.S. citizenship; section 212(a)(9)(B) of Act, 8 U.S.C. § 1182(a)(9)(B), as an alien unlawfully present in the United States for more than one year; and section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), as an alien convicted of a crime involving moral turpitude. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility (Form I-601) pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), section 212(i) of the Act, 8 U.S.C. § 1182(i), and section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), in order to return to the United States to reside with his wife and daughter.

The officer in charge found that the applicant failed to establish extreme hardship to his U.S. citizen spouse. *Decision of the Officer in Charge*, dated August 30, 2004. The officer in charge further found that even if extreme hardship had been established, the nature of the applicant's criminal conviction and the fact that the applicant was in possession of several identities and social security cards would weigh heavily against the favorable exercise of discretion. *Id.* The officer in charge denied the application accordingly. *Id.*

The AAO notes that in addition to the waiver of inadmissibility, the applicant also filed an Application for Permission to Reapply for Admission Into the United States After Departure or Removal (Form I-212). The officer in charge denied both applications in a single decision. *Decision of the Officer in Charge*, dated August 30, 2004. The applicant has filed and paid a fee for only one appeal. In accordance with the *Adjudicator's Field Manual*, the AAO will only address the denial of the applicant's Form I-601 waiver application.¹

The record contains, *inter alia*: a copy of the couple's marriage certificate, indicating that they were married on June 2, 1986; a copy of their daughter's birth certificate and passport; criminal conviction documents; copies of fraudulent birth certificates, social security cards, driver's licenses, and passports; several handwritten statements and letters from the applicant and his wife; copies of gas, water, and electric bills showing delinquency in payment; a copy of a foreclosure notice; a letter from [REDACTED]'s physician

¹ The *Adjudicator's Field Manual* states:

If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose.

Adjudicator's Field Manual at Ch. 43.2(d). In the instant case, the AAO has determined that the applicant is not eligible for a waiver of inadmissibility. Therefore, even if the applicant had filed an appeal of the denial of his Form I-212 application, his application for permission to reapply for admission would likewise fail.

stating that [REDACTED] had been receiving treatment for a nervous breakdown due to stress; and a letter from the applicant's physician in Nigeria stating that the applicant had severe hypertension and had suffered a mild stroke. The entire record was reviewed and considered in rendering this decision.

The record indicates that the applicant first entered the United States using a student visa in December 1982 under the alias "[REDACTED]" After conceding he violated the terms of his student visa, the applicant was deported on April 5, 1984. He re-entered the United States without inspection in November 1984. The record shows that the applicant was convicted of simple assault on November 11, 1988, and that his wife, Ms. [REDACTED], called the police about her husband three or four times. In addition, on September 13, 1989, after having written a check for insufficient funds under the alias "[REDACTED]" the applicant was convicted of theft by deception in the Superior Court of Fulton County, Georgia, and sentenced to one year imprisonment and three years probation. The applicant was subsequently exonerated of this conviction. *See Superior Court, Fulton County, Georgia, Order of Discharge*, dated January 6, 1993 (stating that the applicant "is hereby discharged without Court adjudication of guilty and is exonerated of any criminal purposes, . . . and he shall not be considered to have a criminal conviction of said charge").² The applicant was removed from the United States to Nigeria for the second time on January 24, 1990. His wife and daughter moved to Nigeria on March 17, 1991, and became permanent residents there. On June 28, 1991, the applicant again attempted to enter the United States without inspection, but was apprehended and convicted by the U.S. District Court for the Northern District of New York of violating section 275 of the Act, 8 U.S.C. § 1325, for improper entry by an alien. He was sentenced to 90 days confinement. After a hearing before an immigration judge, the applicant was removed from the United States for the third time on July 1, 1999. The applicant now seeks a waiver of inadmissibility to return to the United States.

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

(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.

(ii) Falsely claiming citizenship. –

(I) In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

....

² The AAO notes that the applicant still has a "conviction" under the Act regardless of any subsequent exoneration. Section 101(a)(48) of the Act, 8 U.S.C. § 1101(a)(48).

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

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.³

The record shows that the applicant purchased birth certificates from the U.S. Virgin Islands in his own name as well as in the names of [REDACTED] and [REDACTED] in order to gain admission into the United States. Therefore, the evidence shows that the applicant is inadmissible under section 212(a)(6)(C)(i) and (ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) and (ii).

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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. See section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). Hardship the alien himself experiences upon deportation, or hardship upon the alien's children, is not a permissible consideration under the statute. *Id.* Therefore, the only relevant hardship in the present case is hardship suffered by the applicant's wife, [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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

In her appeal, the applicant's wife, [REDACTED], asserts that she has, indeed, suffered extreme hardship since her husband's removal to Nigeria in 1999. She claims that her husband must return to the United States in order "to avoid the return of pre-January 2004 extreme hardship conditions." She further claims that she has

³ The applicant is also inadmissible for unlawful presence under section 212(a)(9)(B)(i)(II), 8 U.S.C. § 1182(a)(9)(B)(i)(II). The AAO notes that a waiver for unlawful presence under section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), consists of the same requirements as a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), and, therefore, the analysis in this decision is applicable to both grounds of inadmissibility.

not been able to afford an operation to remove a tumor that was discovered in July 1999, and was unable to afford medical treatment when she broke her toe. In addition, she contends that her husband has developed serious medical problems in Nigeria and submitted a medical report which states that he suffers from severe hypertension and recently had a mild stroke. The medical report further stated that the applicant was experiencing stress and anxiety because he is separated from his wife and children, and warned that he is at high risk of developing paralysis or having a serious stroke if the condition continues.

It is not evident from the record that the applicant's spouse would suffer extreme hardship as a result of the applicant's waiver being denied.

There is insufficient evidence in the record to show that [REDACTED] would suffer financial hardship as she claims. The record shows that [REDACTED] became the owner of Cottman Transmission, an automobile transmission repair shop, in January 2004. *Brief in Support of Appeal* at 3-4. Ms. [REDACTED] began her employment with Cottman Transmission in September 1999 and was the Manager of the company, earning a salary of \$38,000 per year. *Letter from Cottman Transmission*, dated February 26, 2002. According to Ms. [REDACTED] herself, after she became the owner of the company, she no longer suffered any financial hardship. [REDACTED] stated, "I can give [my daughter] everything now financially, but I cannot give her DAD. . . . At this point in my life[,] I am a very successful business owner, I have several employees that my company support[s]." See *Letter from [REDACTED]*, dated May 26, 2004. Rather, [REDACTED]'s current claim is that "the demand of running this business is beyond [her] long term capability" and that she fears returning to "pre-January 2004 extreme hardship conditions." *Brief in Support of Appeal* at 3-4.

There is evidence in the record that prior to [REDACTED] ownership of Cottman Transmission in January 2004, she was delinquent in paying her water, electricity, and gas bills, and received a foreclosure notice. *Letter from [REDACTED] and supporting documents*, dated April 29, 2003. However, [REDACTED] does not elaborate, explain, or provide any details regarding why she is unable to continue running the business. In addition, there is no evidence in the record that the applicant has any experience with Cottman Transmission, automobile repairs, or how to run a business. Significantly, there are no financial or tax documents in the record. Therefore, there is no information regarding [REDACTED] current income or financial situation. Going on record without supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In any event, even assuming financial hardship, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. See also *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).

Similarly, there is insufficient evidence in the record to substantiate [REDACTED] claims regarding her physical and mental health conditions. Aside from [REDACTED] own statements, there is nothing in the record addressing the tumor that was discovered in July 1999, or [REDACTED] broken toe. There is one letter in the record stating that [REDACTED] suffered a nervous breakdown as a result of the applicant's deportation. *Letter from [REDACTED]*, dated April 26, 2003. The letter stated that "since February 12, 2001, [REDACTED] has been receiving treatment for . . . a neurotic medical condition commonly known as nervous breakdown due to acute Teheran stress." The letter, which appears to be written by a

physician of internal medicine, does not describe what treatment entails, the extent or seriousness of Ms. [REDACTED] mental condition, what the prognosis may be, or what type of support she may require. There is no evidence [REDACTED] sought the assistance of any mental health professional. In addition, [REDACTED] did not mention her mental status in her appeal. Although the AAO recognizes that [REDACTED] suffered hardship as a result of her husband's deportation, this single letter is insufficient to meet her burden of proving extreme hardship, particularly when there are no financial documents in the record to support her contention that she could not afford surgery for her tumor or treatment for her toe. Again, going on record without supporting documentary evidence is insufficient to meet her burden of proof. *Matter of Soffici*, supra. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical condition or the treatment and assistance needed.

[REDACTED] also contends that she and her children miss the applicant and that the couple's three U.S. citizen children frequently ask for their father. However, [REDACTED] does not discuss the possibility of moving to Nigeria again, where she is already a legal permanent resident, to avoid the hardship of separation, and she does not address whether such a move would represent a hardship to her. The AAO notes that although [REDACTED] states she has been raising three children as a single parent since the applicant's removal, the record contains a copy of a passport and birth certificate for only one child. Although she has endured hardship as a result of separation from the applicant, her situation, if she continues to remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. See also *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

To the extent the applicant claims he has a "heart deformity" and submitted documentation stating he has high blood pressure, hypertension, and suffered a mild stroke, as discussed above, the hardship the alien himself experiences upon deportation is not a permissible consideration under the statute. See section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1).

Finally, the fact that the applicant may be challenging his criminal convictions does not change the outcome of this decision. There is no evidence in the record, such as a copy of a court filing, that shows the applicant or [REDACTED] are in the process of challenging the applicant's criminal convictions. In any event, the sole hardship the applicant claims is with respect to [REDACTED] and, as discussed above, 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 he merits a waiver as a matter of discretion.

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