

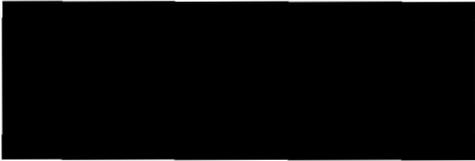


U.S. Citizenship
and Immigration
Services

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FILE:  Office: CALIFORNIA SERVICE CENTER

Date: **SEP 09 2008**

IN RE: Applicant: 

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 Director, California Service Center, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 38-year-old native and citizen of Nigeria who was found 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). The record reflects that the applicant is married to a U.S. citizen, and has two U.S. citizen children. The applicant presently seeks a waiver of inadmissibility in order to adjust his status to lawful permanent resident and remain in the United States with his family.

The director determined that the applicant was inadmissible, and that the denial of a waiver would not result in extreme hardship to his U.S. citizen spouse. The waiver application was denied accordingly. On appeal, the applicant, through counsel, claims that the director erred in questioning the findings of the applicant's spouse's physician. The applicant maintains that his spouse would face extreme emotional hardship should the waiver be denied.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The director found the applicant to be inadmissible based on his fraudulent attempt to gain admission to the United States. In 1994, the applicant attempted to gain admission to the United States by presenting a fraudulent Liberian passport to an Immigration Officer. The applicant does not dispute this finding. The AAO therefore affirms the director's determination of inadmissibility. The question remains whether the applicant qualifies for a waiver.

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

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the applicant's U.S. citizen spouse. Hardship to the applicant, or to his U.S. citizen children, is not a relevant consideration under the statute.

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. 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 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).

The applicant's spouse, [REDACTED] is a 32-year-old native-born U.S. citizen. She met the applicant in 1996, and they were married in 2000. *See* Statement by Applicant's Spouse. She has a daughter from a previous relationship, and two children with the applicant. *Id.* The record contains a letter from a psychiatrist at Women & Infants Day Hospital Program, stating that the applicant's spouse was "diagnosed with Major Depressive Disorder, Severe Recurrent with postpartum onset and Bulimia Nervosa in remission." *See* Psychiatrist Letter, dated January 29, 2002. The psychiatrist further states that separation from the applicant "and single parenting of three children would be tremendous stressors" and "might exacerbate her illness." *Id.* The record contains a letter, dated September 7, 2000, verifying the applicant's spouse's employment at Citizens Bank at an annual salary of \$23,000. The record indicates that the applicant is unemployed. *See* Form G-325A, Biographic Information, submitted with the applicant's adjustment of status application. The record further indicates that the couple's income in 2000 was approximately \$27,000. *See* 2000 Income Tax Return.

The record in this case, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant is denied the waiver. The AAO notes that the record indicates that the applicant's spouse is not financially dependent on the applicant. The record indeed suggests that the applicant's spouse is well-employed, and supports herself and her children. The record indicates that the applicant's spouse was diagnosed by a psychiatrist, who opined that separation from the applicant "might exacerbate her illness." *See* Psychiatrist Letter, dated January 29, 2002. The letter, however, states that the applicant's spouse was treated for her mental health condition from October 22, 2001 to October 30, 2001. The record does not contain evidence of what, if any, further treatment the applicant's spouse received or to support the psychiatrist's conclusory claim regarding the effect of separation from the applicant. The AAO notes that the documents submitted by the applicant date back to 2002 and earlier, and have not been updated. The AAO also notes that there is no indication in the record of the applicant's spouse's family or community ties.

Although the AAO recognizes that separation from the applicant would cause hardship, such hardship is common to all individuals in the applicant's circumstances and does not rise to the level of "extreme." While the AAO has carefully considered the emotional impact of separation resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from a spouse is at issue. *See Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that "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"). In this case, the applicant has failed to meet his burden to establish that his departure would result in extreme hardship to his wife. The evidence in the record is old and has not been updated. Moreover, the evidence suggests that the applicant's spouse is not financially dependent on the applicant, and that her mental health condition was treated during one week.

The AAO notes that the applicant's spouse did not indicate in her statement whether she would chose to relocate to Nigeria. In this regard, the AAO notes that the statute does not require her to do so. The AAO further notes that there is no evidence in the record to establish that relocating would result in extreme hardship. *See Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986) (holding that the "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient").

Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1182(i).

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. 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.