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

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Frankfurt Date: JUL 02 2003

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

JUL0203_07H2212

DISCUSSION: The dual waiver application was denied by the Officer in Charge, Frankfurt, Germany, and is now before the Administrative Appeals Office 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 by a consular officer under sections 212(a)(2)(B) and 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(B) and 1182(a)(6)(C)(i), for having been convicted of multiple crimes and for having attempted to procure a visa by fraud or misrepresentation. The applicant married a United States citizen on November 13, 1998, in Lagos, Nigeria, and he is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of this permanent bar to admission as provided under sections 212(h) and (i) of the Act, 8 U.S.C. 1182(h) and (i), to reside with his spouse in the United States.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon on his United States citizen wife and denied the application accordingly.

On appeal, the applicant's wife indicates that the stolen property conviction is incorrectly on her husband's record. She states that he did not intentionally misstate any fact on his visa application. The applicant's wife asserts that her husband is not a criminal, that he has been fully employed, that he has not been in any trouble since 1999, and that they have two children together. The applicant's wife states that she is in the U.S. Army and has orders to go to Fort Lewis, Washington. She states that she wants to keep the family together.

In *Matter of Khalik,* 17 I&N Dec. 518 (BIA 1980), the Board of Immigration Appeals (BIA) held that the Service cannot go behind the judicial record to determine the guilt or innocence of an alien for a criminal offense. A record of conviction constitutes a conviction for immigration purposes. The applicant can only appeal such a conviction within the court system. Therefore, the issue of the applicant's conviction will not be discussed in this decision.

Issues of inadmissibility are to be determined by the consular officer when an alien applies for a visa abroad. This proceeding must be limited to the issue of whether or not the applicant meets the statutory and discretionary requirements necessary for the inadmissibility ground to be waived. 22 C.F.R. § 42.81 contains the necessary procedures for overcoming the refusal of an immigrant visa by a consular officer.

The record reflects the following:

1. On February 6, 1998, the applicant was convicted of the offense of Theft. He was fined.

2. On July 22, 1999, the applicant was convicted of the offense of Grievous Bodily Harm with Damage to Property. He was sentenced to one year and four months imprisonment.

Imprisonment was suspended and he was placed on probation for three years.

The record also indicates that the applicant did not reveal his prior convictions on his nonimmigrant visa application, and therefore, procured admission into the United States in November 1999 by fraud.

Section 212(a)(2)(B) of the Act provides that:

> Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

Section 212(h) of the Act provides that the Attorney General may, in his discretion, waive application of subparagraph (B), if-

> (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that--
>
> (i) the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
>
> (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
>
> (iii) the alien has been rehabilitated; or
>
> (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 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; and
>
> (2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he or she may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or for adjustment of status….

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

Section 212(i) of the Act provides that the Attorney General may, in her discretion, waive application of clause (i) of subsection (a)(6)(C)--

> (1) 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 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.
>
> (2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

The applicant requires both a section 212(h) and section 212(i) waiver in this matter. Although both sections 212(h) and 212(i) require a showing of extreme hardship to a qualifying relative, the application will be adjudicated first according to the standards established for section 212(i) waivers, because the criteria is more stringent than that set forth in section 212(h) waiver proceedings.

Sections 212(a)(6)(C) and 212(i) of the Act were amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009. There is no longer any alternative provision for waiver of a section 212(a)(6)(C)(i) violation due to passage of time. Nothing could be clearer than Congress' desire in recent years to limit, rather than extend, the relief available to aliens who have committed fraud or misrepresentation. Congress has almost unfettered power to decide which aliens may come to and remain in this country. This power has been recognized repeatedly by the Supreme Court. *See Fiallo v. Bell*, 430 U.S. 787 (1977); *Reno v. Flores*, 507 U.S. 292 (1993); *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). *See also Matter of Yeung*, 21 I&N Dec. 610, 612 (BIA 1997).

In 1986, Congress expanded the reach of the grounds of inadmissibility in the Immigration Marriage Fraud Amendments of 1986, P.L. No. 99-639, and redesignated as section 212(a)(6)(C) of the Act by the Immigration Act of 1990 (Pub. L. No. 101-649, Nov. 29, 1990, 104 Stat. 5067). In the Act of 1990, which became effective on June 1, 1991, Congress imposed a statutory bar on those who made oral or written misrepresentations in seeking admission into the United States and on those who made material misrepresentations in seeking admission into the United States or in seeking "other benefits" provided under the Act. Congress made the amended statute applicable to the receipt of visas to, and admission of, aliens who committed acts of fraud or misrepresentation, whether those acts occurred before, on, or after the date of enactment.

Congress has increased the penalties on fraud and willful misrepresentation, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar and eliminating children as a consideration in determining the presence of extreme hardship. Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a requirement for section 212(i) relief, once established, it is but one favorable discretionary factor to be considered. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (the Board) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act include, but are not limited to, the following: 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 finally, 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 in *Cervantes-Gonzalez, supra*, also referred to *Silverman v. Rogers*, 437 F.2d 102 (1st Cir. 1970), cert. denied 402 U.S. 983 (1971), where the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States."

The court 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.

There are no laws that require a United States citizen to leave the United States and live abroad. Further, the common results of deportation or being inadmissible are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991). The 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.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that the qualifying relative would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. 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. Further, as he was found to be inadmissible under section 212(i), no purpose would be served in reviewing his eligibility under section 212(h).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely 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.