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U.S. Citizenship
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FILE: [REDACTED] Office: LAS VEGAS, NEVADA Date: DEC 05 2008

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)
of the Immigration and Nationality Act, 8 U.S.C. section 1182(a)(9)(B)

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).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Las Vegas, Nevada. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nigeria. He 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 having procured entry into the United States by fraud or willful misrepresentation. The applicant is married to a United States citizen 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 U.S. citizen spouse.

In a decision dated June 30, 2006, the director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

The applicant filed a Form I-290B, Notice of Appeal, on July 31, 2006. On appeal, counsel for the applicant does not contest the grounds for inadmissibility, but asserts that the applicant's U.S. citizen wife would suffer extreme hardship should the applicant be unable to remain in the United States. Counsel submitted additional evidence in support of this claim.

The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Regarding the applicant's grounds of inadmissibility, the record reflects that on November 17, 2003, the applicant entered the United States on an F-1 student visa. Pursuant to the terms of this visa, the applicant was required to enroll in and attend Henderson State University in Arkadelphia, Arkansas beginning on January 14, 2004. However, the applicant never enrolled at the university and in fact has been living in Las Vegas, Nevada since November 2003. The director found that the applicant has committed fraud and misrepresented himself by obtaining an F-1 student visa in order to circumvent U.S. immigration law and gain entry into the United States, and, therefore, is inadmissible under section 212(a)(6)(C)(i) of the Act. On appeal, the applicant does not contest this finding.

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 U.S. citizen or lawful permanent 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. Once extreme hardship to a qualifying relative 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).

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.

The record indicates that the applicant filed Form I-601 on March 21, 2006. On the Form I-601, the applicant indicated that he is claiming eligibility for a waiver through his wife, [REDACTED] who is a citizen of the United States. The applicant submitted no documentation or evidence with the Form I-601, other than an undated "Motion in Support of Waiver of Inadmissibility" from his previous counsel.

In the decision denying the waiver application on June 30, 2006, the director concluded that the applicant had failed to show that extreme hardship exists for a qualifying relative. Specifically, the director noted that the statements from the applicant's previous counsel alone cannot be given credible weight without evidence to support them, and no evidence was submitted to show that the applicant's spouse would suffer extreme hardship should the applicant be removed from the United States.

On appeal, counsel for the applicant asserted that if the applicant is removed from the United States, his wife would face extreme hardship whether she remains in the United States without him or relocates with him to Nigeria. Counsel stated that without the applicant, his wife would likely need to rely on public assistance to raise her children (who are not children of the applicant) in the United States, and would also lose the health insurance they now have through the applicant. Counsel further asserted that [REDACTED] is unsure whether she would travel with the applicant to Nigeria given that she has no family or other ties to that country; living conditions and educational opportunities are limited as compared to the United States; and even if they are able to find employment, they would be unable to support themselves.

Counsel submitted on appeal an affidavit dated July 25, 2006 from the applicant's wife. In the affidavit, [REDACTED] recounted that prior to meeting the applicant, she and her children lived with her mother in Las Vegas. She stated that she and the applicant have lived on their own since June 2005, and that she currently depends on the applicant to make ends meet financially. She stated that if the applicant were not able to remain in the United States, she would not be able to afford to meet her financial responsibilities, nor could she rely on her mother who no longer lives in Las Vegas. Therefore, [REDACTED] stated, she may need to request public assistance in order to support her children. She also stated that she depended on the applicant emotionally, and that the applicant's departure would have a negative impact on her children since he has become a very important fixture in their lives. Finally, [REDACTED] stated that she did not believe that she would travel to Nigeria with the applicant if he were unable to remain in the United States.

Counsel also submitted copies of a number of documents, including: the applicant's passport and marriage certificate; the birth certificates of his wife's children; a statement of earnings and letter of confirmation of employment from the Bellagio Hotel for the applicant; a document entitled "Federal Return Recap" for the tax year 2005; the rental agreement for the applicant's current apartment; and the applicant's health insurance card. Counsel also submitted a copy of the U.S. Department of State's 2005 Country Report on Human Rights Practices in Nigeria.

Upon review, the record does not support the conclusion that the applicant's wife would experience extreme hardship as the result of the applicant's removal from the United States. Based on the statements in [REDACTED] affidavit, her concerns appear to be centered upon the financial hardship that she would encounter should the applicant no longer be able to live in the United States. It is noted that based on the record, the applicant is the primary income earner in the family. However, [REDACTED] also stated in her affidavit that she is presently employed at Office Max, earning \$9.50 an hour. While the AAO recognizes the financial limitations imposed by her current salary level, there is no evidence in the record that [REDACTED] would be unable to find gainful employment or other means to support her family without the applicant. In fact, the record indicates that prior to meeting the applicant, [REDACTED] was supporting herself and her children. [REDACTED] stated that she "would not be able to make it on [her] own" because she and her children used to live with her mother, who no longer lives in Las Vegas. However, there is no indication that [REDACTED] mother would not be able to render assistance, or why [REDACTED] and her children would have to remain in Las Vegas, rather than relocate near her mother. [REDACTED] also stated in general that she depended on the applicant emotionally, and that the applicant's departure would have a negative impact on her children since he has become a very important fixture in their lives. The AAO recognizes that Ms. [REDACTED] will endure hardship as a result of separation from the applicant. However, based on the record, her situation, if she remains in the United States, is typical of individuals who are separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

Further, it is noted that while counsel speculated upon the hardship that [REDACTED] and her children might encounter upon relocating to Nigeria and submitted general country information, no evidence was submitted addressing the hardship that [REDACTED] specifically would face in that country. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, [REDACTED] explicitly stated in her own affidavit that she does not intend to relocate to Nigeria with the applicant to avoid the hardship of separation, and she does not address whether such a move would represent a hardship to her. As such, the AAO has no basis upon which to conclude that relocation to Nigeria would result in extreme hardship to the applicant's spouse.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship there is a deep level of affection and a certain amount of emotional and social interdependence. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the

availability of a waiver of inadmissibility to cases of “*extreme hardship*,” Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in INA § 212(i), be above and beyond the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of inadmissibility 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). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I. & N. Dec. 245, 246 (BIA 1984).

A review of the documentation in the record fails to establish that the applicant’s inadmissibility to the United States would cause extreme hardship to a qualifying relative of the applicant. 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.