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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE:



Office: ACCRA, GHANA

Date: JUN 26 2008

IN RE:



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. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT: Self-represented

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Acting Officer in Charge, Accra, Ghana denied the waiver application and a subsequent appeal was rejected by the Administrative Appeals Office (AAO). The AAO will reopen the matter. The appeal will be dismissed.

On October 30, 2007, the AAO rejected the applicant's appeal as untimely filed. Documentation filed by the applicant's spouse on December 3, 2007, indicates that the applicant's appeal was timely filed. The AAO is therefore reopening the matter *sua sponte*.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The applicant is the spouse of a naturalized U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her spouse.

The acting officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting Officer in Charge*, dated June 27, 2005.

The record reflects that, on January 18, 1993, the applicant was admitted to the United States as a B-1 nonimmigrant visitor. The applicant remained in the United States past her authorized stay, which expired on February 13, 1993. On September 8, 1994, the applicant filed a Request for Asylum in the United States (Form I-589). On October 23, 1997, the applicant's Form I-589 was referred to an immigration judge and she was placed into immigration proceedings. On March 5, 1998, the immigration judge ordered the applicant removed *in absentia*. The applicant failed to depart the United States. On August 28, 1999, the applicant married her spouse, [REDACTED]. In September, 1999, immigration officers apprehended the applicant. On September 10, 1999, the applicant was released on an order of supervision. On December 20, 1999, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On January 5, 2000, the applicant was removed from the United States and returned to Nigeria, where she has since resided.

On January 20, 2003, [REDACTED] filed a Petition for Alien Fiancée (Form I-129F) on behalf of the applicant, which was approved on March 14, 2003. On May 14, 2004, the Form I-130 was approved. On February 23, 2005, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her spouse.

On appeal, the applicant's spouse contends that his hardship dictates that his wife should be given a waiver. *See Affidavits of [REDACTED]* dated September 2, 2003. In support of his contentions, the applicant's spouse submits the referenced affidavits and additional statements from himself and the applicant. The entire record was reviewed in rendering a decision in this case.

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

(B) Aliens Unlawfully Present.-

(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 Attorney General [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.

The acting officer in charge based the finding of inadmissibility under section 212(a)(9)(B)(v) of the Act on documentation establishing the applicant's unlawful presence in the United States from March 5, 1998, the date on which she was ordered removed from the United States, until January 5, 2000, the date on which she departed the United States. On appeal, the applicant's spouse does not contest the acting officer in charge's determination of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(a)(9)(B)(v) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

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).

Since an applicant's qualifying relative is not required to reside outside of the United States as a result of denial of the applicant's waiver request, an applicant must establish that the qualifying relative would suffer extreme hardship whether he or she remained in the United States or accompanied the applicant to the foreign country of residence. 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).

The record reflects that [REDACTED] is a native of Nigeria who became a lawful permanent resident in 1997 and a naturalized U.S. citizen in 2002. The applicant and [REDACTED] do not have any children together. The applicant is in her 30's and [REDACTED] is in his 40's.

[REDACTED] in his affidavits, states that he has suffered emotional pain since his separation from the applicant. He states that his daily life and activities have deteriorated tremendously and are coupled with a financial predicament, which has affected his educational goals. He states that he was devastated when his wife was arrested only a few days after their marriage. He states that his wife lives with his family in Nigeria. He states that he works two jobs in order to support the applicant, his mother and his extended family in Nigeria, who rely upon his income as their sole financial support. He states that this burden has caused him a lot of heartbreak and depression. He states that he has been unable to continue his engineering degree program because of the expense and the turmoil that he has suffered. He states that he wants to have children, which is currently impossible due to the separation from his wife. He states that the applicant has been a source of strength after his divorce from his first wife. He states that his hopes and dreams have seemed to fade away and that he has been unable to live with the applicant as man and wife. He states, alternately, that he has been able to visit the applicant on only two occasions and that he has not seen her since she was removed from the United States. He states that he wants the applicant in the United States so that he can focus on his career and life. He states that he is suffering emotionally, financially and otherwise since their separation because she is his soul mate and he misses her daily.

The applicant, in her affidavit, states that [REDACTED], her second husband, is the only family that she has and he has supported her since they first met. She states that it has not been easy to maintain their marriage and her dream of becoming a respiratory therapist has been on hold. She states that their separation does not give them an opportunity to have children and she is unable to be with the man that she loves.

The AAO acknowledges [REDACTED]'s claim that he has been unable to pursue his engineering program due to financial constraints. The record, however, fails to establish that he has been studying engineering or is enrolled in North Lake College as he indicates. Moreover, the deferral of [REDACTED]'s educational goals is not a hardship that is beyond those commonly suffered by aliens and families upon removal. There is no evidence in the record that [REDACTED] suffers from a physical or mental illness that would cause him to suffer hardship beyond that commonly suffered by individuals whose families are separated as a result of removal. While the AAO acknowledges that [REDACTED] has experienced depression as a result of separation from his spouse, the record does not distinguish his reactions from those commonly experienced by families upon removal.

does not indicate that he is dependant on the applicant's income. Instead he claims that he is the sole source of income for the applicant, his mother and extended family in Nigeria. There is, however, no evidence in the record, besides [REDACTED]'s affidavits, to establish that the applicant, his mother or his extended family are financially dependant on him and that they are unable to obtain some type of employment to reduce the financial burden on [REDACTED]. The record does not support a finding of financial loss that would result in an extreme hardship to [REDACTED], even when combined with the emotional hardship described above.

The applicant and [REDACTED] do not assert that [REDACTED] would suffer extreme hardship if he were to join the applicant in Nigeria. Accordingly, the AAO is unable to find that [REDACTED] would experience hardship should he choose to join the applicant in Nigeria. Moreover, the AAO notes, as previously indicated, that the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [REDACTED] would not experience extreme hardship if he remained in the United States without the applicant.

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 would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] would face the unfortunate, but expected disruptions and difficulties that arise whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or 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 point made in this and prior decisions on this matter is that 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 section 212(a)(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases. 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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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). 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 has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed. The application is denied.