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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE [REDACTED]

Office: ACCRA, GHANA

Date:

FEB 28 2003

IN RE: Applicant:



APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(9)(A)(ii)(I) filed in conjunction with Application for Waiver of Grounds of Inadmissibility under Sections 212(a)(9)(B)(v) of the Act, 8 U.S.C. 1182(a)(9)(B)(v), and 212(i) of the Act, 8 U.S.C. 1182(i).

IN BEHALF OF APPLICANT:



PUBLIC COPY

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 Service 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The applications were denied by the Officer in Charge, Accra, Ghana, and that decision has been certified to the Associate Commissioner for Examination for review. The denial of the application for permission to reapply for admission will be withdrawn. The denial of the application for waiver of inadmissibility will be affirmed.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(9)(A)(ii), for having previously been removed from the United States; and under 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 a period of one year or more. The applicant is married to a United States citizen and is the beneficiary of an approved petition for alien relative. He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii); and a waiver of inadmissibility under section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v) in order to travel to the United States to reside.

The record indicates that the applicant was also found by the officer in charge to be inadmissible under section 212(a)(6)(C), 8 U.S.C. 1182(a)(6)(C), for having sought to procure a benefit (amnesty) fraud or willful misrepresentation. He therefore also requires a waiver of inadmissibility as provided under section 212(i) of the Act.

The record reflects that the applicant was admitted to the United States on or about January 20, 1991 as a nonimmigrant visitor for pleasure, with authorization to remain until July 19, 1991. At the time of his arrival, he indicated his name as [REDACTED] and his date of birth as June 6, 1957. He remained longer than authorized and on December 12, 1994, filed an application for asylum stating that he had entered the United States without inspection in 1993 under the name of [REDACTED] with the date of birth of June 30, 1957. On May 26, 1995, the applicant's request for asylum was referred to an immigration judge and the applicant was issued with an Order to Show Cause and Notice of Hearing. On December 16, 1995, the applicant married his spouse and on May 23, 1999, she filed a petition for alien relative on his behalf. The Service issued Additional Charges of Inadmissibility/Deportability, charging the applicant with being inadmissible under section 212(a)(6)(C) of the Act, 8 U.S.C. 1182(a)(6)(C) on September 23, 1997. On March 12, 1998, an immigration judge granted the applicant permission to voluntarily depart the United States no later than July 12, 1998, with an alternate order of deportation to Nigeria. The applicant's voluntary departure date was subsequently extended to January 8, 2000.



In a single decision addressing both the Form I-212 and Form I-601 applications, the officer in charge determined that the applicant had failed to establish that the denial of the waiver application would result in extreme hardship to a qualifying relative. The officer in charge also determined that the adverse evidence outweighed the applicant's good moral character during his stay in the United States. The officer in charge denied both the Form I-601 and Form I-212 accordingly.

Evidence contained in the record indicates that the applicant timely departed the United States under voluntary departure on January 8, 2000. Because the applicant departed voluntarily, he does not appear to be inadmissible to the United States, as found by a consular officer, under section 212(a)(9)(A)(ii) of the Act. Therefore, he does not require a waiver of inadmissibility under section 212(a)(9)(A)(iii) of the Act. Accordingly, the decision of the officer in charge to deny the applicant's Form I-212 will be withdrawn. The applicant, however, remains inadmissible under sections 212(a)(6)(C) and 212(a)(9)(B)(i)(II) of the Act. The Associate Commissioner will adjudicate the Form I-601 application *de novo*.

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-
Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

* * *

(C) MISREPRESENTATION.-

(i) 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.

* * *

(9) ALIENS PREVIOUSLY REMOVED.-

* * *



(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 from the United States, is inadmissible.

* * *

(v) WAIVER.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

Section 212(i) of the Act states:

ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, 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 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).

Sections 212(a)(6)(C) and 212(a)(9)(B) of the Act were amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). After reviewing the IIRIRA amendments to the Act relating to fraud, misrepresentation and unlawful presence in the United States, and after noting the increased penalties Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar in some instances, eliminating children as a consideration in determining the presence of extreme hardship, and providing a ground of inadmissibility for unlawful presence after April 1, 1997, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud, misrepresentation and unlawful presence of aliens in the United States.

It is noted that the requirements to establish extreme hardship in waiver proceedings under section 212(a)(9)(B)(v) of the Act do not include a showing of hardship to the alien as did former cases involving suspension of deportation. Present waiver proceedings require a showing of extreme hardship to the citizen or lawfully resident spouse or parent of such alien. This requirement is identical to the extreme hardship requirement stipulated in the amended fraud waiver proceedings under section 212(i) of the Act, 8 U.S.C. 1182(i).

In Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) stipulated that the factors deemed relevant in determining whether an alien has established "extreme hardship" in waiver proceedings under section 212(i) of the Act include, but are not limited to, the following: (1) the presence of a lawful permanent resident or United States citizen spouse or parent in this country; (2) the qualifying relative's family ties outside the United States; (3) 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; (4) the financial impact of departure from this country; (5) 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.

In response to the notice of certification, counsel submits a brief and documentation including a psychological report of the family, information concerning the spouse's request for a leave of absence from her employment, a physician's letter concerning the spouse, letters of support from the spouse's siblings, school records concerning the applicant's children, and evidence that the spouse and one of the applicant's children were involved in an automobile accident in August 2002.

The documentation supplied indicates that the applicant and his spouse were married in 1995. The spouse has a daughter and the applicant has two sons from prior relationships. The applicant's sons were born in Nigeria in 1984 and 1985 and live with the spouse

and attend school in the United States. The spouse filed petitions for alien relative on behalf of the applicant and his children in May 1996.

Counsel's brief and the psychological report indicate that the applicant's spouse is having a hard time being separated from the applicant. She is anxious, depressed, and having difficulty raising her two teenage step-children on her own without the guidance of their father. The spouse's automobile accident in August 2002 is blamed on the overwhelming stress that she is experiencing due to separation from her spouse. The prospect of moving to Nigeria is devastating to the family and remaining in the United States without his presence is as troubling an option.

In Perez v. INS, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. Further, the common results of deportation 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. See Shooshtary v. INS, 39 F.3d 1049 (9th Cir. 1994). In Silverman v. Rogers, 437 F.2d 102 (1st Cir. 1970), 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."

A review of the documentation in the record, when considered in its totality, fails to establish that the applicant's spouse (the only qualifying relative in this matter) would suffer extreme hardship over and above the normal disruptions involved in separation. 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 sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. See Matter of T--S--Y--, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The denial of the application for permission to reapply is withdrawn. The denial of the application for waiver of inadmissibility is affirmed.