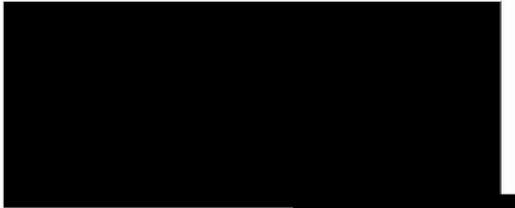




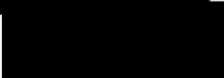
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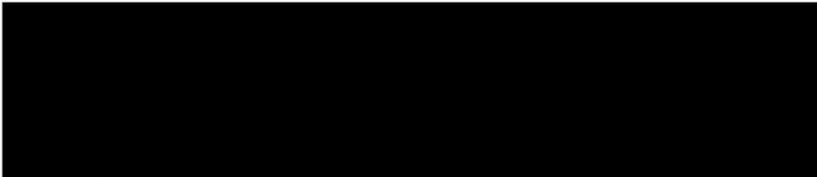


APPLICATION:

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

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Acting Officer in Charge, Accra, Ghana, denied the waiver application and it is now before the Administrative Appeals Office (AAO) 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 pursuant to sections 212(a)(9)(A)(ii) and 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(A)(ii) and 1182(a)(9)(B)(i)(II), for seeking admission to the United States within 10 years after the date on which he was removed from the United States and for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant is married to a citizen of the United States and seeks a waiver of inadmissibility and permission to reapply for admission in order to reside in the United States with his wife.

The acting officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and the unfavorable factors in the applicant's case outweighed the favorable factors. The acting officer in charge denied the Application for Waiver of Grounds of Excludability (Form I-601) and Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) accordingly. *Decision of the Acting Officer in Charge*, dated June 6, 2005.

The record shows that, on February 21, 1987, the applicant was admitted to the United States as a B-1 nonimmigrant until April 15, 1987. On June 24, 1988, the applicant married [REDACTED], a U.S. citizen. On September 1, 1988, Ms. [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On November 28, 1990, the Form I-130 was denied because the applicant failed to provide proof that he was legally divorced from his first wife [REDACTED]. On July 8, 1991, the applicant filed a motion to reopen the Form I-130 by filing a Nigerian divorce certificate for Ms. [REDACTED]. An investigation revealed the divorce certificate was fraudulent. In 1992 and 1993, respectively, the applicant divorced Ms. [REDACTED] and annulled his marriage to Ms. [REDACTED]. On July 28, 1994, the applicant's motion to reopen the Form I-130 was denied because the divorce certificate was fraudulent. On August 24, 1999, the applicant requested to be placed in proceedings in order to seek relief from removal before an immigration judge. On February 22, 2000, the applicant was issued a notice to appear before an immigration judge for proceedings. On April 26, 2000, the applicant failed to appear before the immigration judge who ordered him removed in absentia. The applicant filed a motion to reopen proceedings, which was granted on May 9, 2000. On April 5, 2001, the immigration judge granted the applicant voluntary departure until June 4, 2001. However, the applicant failed to post the required bond and a warrant of deportation was issued on April 19, 2001. The applicant appealed the decision to the Board of Immigration Appeals (BIA). On February 15, 2002, the applicant married his current spouse, [REDACTED], U.S. citizen by birth. On August 30, 2002, the BIA affirmed the immigration judge's order of voluntary departure. Since the applicant had failed to post the correct bond the BIA's decision automatically became an order of removal. On September 21, 2002, Ms. [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. The applicant filed a motion to reopen before the BIA. On December 16, 2002, the BIA denied the applicant's motion to reopen. The applicant then filed another motion to reopen before the BIA. On March 19, 2003, the BIA denied the applicant's second motion to reopen. On January 8, 2004, the applicant appeared at Citizenship and Immigration Services' (CIS) Baltimore, Maryland, District Office for an interview in regard to the Form I-130 filed by Ms. [REDACTED]. The applicant was detained under the outstanding removal order. On January 29, 2004, the applicant was removed from the United States and returned to Nigeria.

On October 10, 2004, the applicant filed the Form I-601 and Form I-212 along with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members and that he warranted a favorable exercise of discretion.

On appeal, counsel asserts that the acting officer in charge mischaracterized the negative factors and failed to consider the positive factors. *Applicant's Brief*, dated June 22, 2005. Counsel also argues that the applicant's wife and child would suffer extreme hardship. In support of these assertions, counsel submitted the above-referenced brief, an additional affidavit from Ms. [REDACTED] a psychological report and medical documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

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)(i)(II) of the Act on the applicant's admitted unlawful presence in the United States for more than one year. Counsel does not contest the acting officer in charge's determination of inadmissibility.

The AAO also finds that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). Section 212(a)(6)(C) of the Act provides, in pertinent part:

(i) 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.

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], 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 [Secretary] 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.

The applicant attempted to obtain immigration benefits by fraud or misrepresentation of a material fact in 1991 by presenting a fraudulent divorce certificate in order to reopen the Form I-130.

Both a section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act and a section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) and 212(i) waiver proceedings.

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 at 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. *Supra.* 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).

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 Ms. [REDACTED] is a citizen of the United States whose parents are natives and citizens of Nigeria. Ms. [REDACTED] resided in Nigeria between 1974 and at least 1992. The applicant has a 17-year old daughter, who is a U.S. citizen by birth and resides with her mother, from his marriage to Ms. [REDACTED]. The applicant and Ms. [REDACTED] have a three-year old son who is a U.S. citizen by birth. The record reflects further that the applicant is in his 40's, Ms. [REDACTED] in her 30's, and Ms. [REDACTED] and the applicant's son have some health concerns.

Counsel asserts that the applicant's children would suffer extreme hardship if they were to remain in the United States without the applicant or if they were to return to Nigeria in order to be with the applicant. In support of his contentions, counsel submitted Ms. [REDACTED] affidavits. The Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (1996), removed hardship to an alien's children as a factor in assessing hardship waivers under sections 212(a)(9)(B)(v) and 212(i) of the Act. It is noted that Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Thus, hardship to the applicant's U.S. citizen children will not be considered in this decision, except as it may affect Ms. [REDACTED] the only qualifying relative.

Counsel asserts Ms. [REDACTED] would suffer extreme hardship if she were to remain in the United States without the applicant. Ms. [REDACTED] in her affidavits, states the applicant has provided her with emotional support during her diagnosis and treatment for osteoporosis and by assisting her in caring their son, who has an illness that requires regular doctors visits and medication. Ms. [REDACTED] states she has almost gone into clinical depression since the applicant departed the United States because he is not there to provide her with such emotional support. Ms. [REDACTED] states that he contributed significantly to the payment of monthly household costs and helped to care for their son when she was required to work nontraditional hours as a nurse. Ms. [REDACTED] states that as a result of the applicant's departure she spends a significant amount of her paycheck on childcare and she is incapable of meeting her financial obligations. Ms. [REDACTED] states that her financial concerns are increased due to the pain she experiences with her disease and the fact that she has been advised to curtail her activities and workload. The AAO notes that, besides Ms. [REDACTED] affidavits, there is no evidence in the record to suggest that the applicant's son has a medical condition. While it is unfortunate that Ms. [REDACTED] is essentially a single parent and professional childcare may be expensive and may not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation.

The psychological report, dated July 5, 2005, states Ms. [REDACTED] was referred to him because she has been experiencing overwhelming depression with suicidal thoughts since the applicant's deportation to Nigeria due to her serious financial, emotional and physical hardship. The psychological report states Ms. [REDACTED] is on the verge of a serious nervous breakdown and has been prescribed antidepressants. The psychological report does not make a diagnosis or prognosis for Ms. [REDACTED]. While the psychological report indicates that Ms. [REDACTED] is being placed on antidepressants, the record does not contain evidence that Ms. [REDACTED] has received psychological treatment or evaluation other than the single meeting used to write the psychological report. The report can, therefore, be given little weight. Additionally, the AAO notes that the psychological

report was conducted after the Form I-601 was denied and that Ms. [REDACTED] made no mention of any abnormal psychological problems in the affidavit, which she submitted with the Form I-601. The first indication of any psychological problems was in the report submitted in July 2005.

A letter from Dr. [REDACTED] Ope in regard to Ms. [REDACTED] indicates that she has been under treatment for severe osteoporosis and that her activities should be limited in order to avoid a crippling bone fracture. A medical report from Dr. [REDACTED] dated July 2005, indicates that Ms. [REDACTED] work schedule should be limited to three days of eight-hour shifts. However, there is no evidence in the record to suggest that Ms. [REDACTED] is currently unable to support herself financially. There are no records to indicate what are Ms. [REDACTED]s current income, household expenses or any financial assistance she receives from the applicant. The medical letter does not indicate that Ms. [REDACTED] condition causes her extreme pain or the prescribed treatment results in side effects that would cause her to be unable to function on a daily basis without assistance from the applicant.

There is no evidence in the record to suggest that Ms. [REDACTED] suffers from a physical or mental illness that would cause her to suffer emotional or financial hardship beyond that rises to the level of extreme hardship. Finally, according to the record, Ms. [REDACTED] has family members in the United States, such as her parents and sister, who may be able to support her financially and emotionally in the absence of the applicant.

In her first affidavit, Ms. [REDACTED] contends that she would face extreme hardship if she relocated to Nigeria in order to remain with the applicant because the healthcare system in Nigeria is incomparable to the state of art healthcare system in the United States and she and her son would find the medications they require to be unavailable in Nigeria. Ms. [REDACTED] in her second affidavit asserted that she would not return to Nigeria. The record does not contain any evidence, beside Ms. [REDACTED]s affidavit, to suggest that she would be unable to obtain sufficient medical care in Nigeria. As discussed above, there is no evidence in the record to suggest the applicant's son suffers from a medical condition. Finally, the AAO notes that, even if Ms. [REDACTED] had established she would suffer extreme hardship by accompanying the applicant to Nigeria, as a U.S. citizen, 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, she would not experience extreme hardship if she 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 Ms. [REDACTED] will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising 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 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 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 sections 212(a)(9)(B)(v) and 212(i) 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 failed to establish extreme hardship to his U.S. citizen spouse as required under sections 212(a)(9)(B)(v) and 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he is eligible for permission to reapply for admission or merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) 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.