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U.S. Citizenship
and Immigration
Services

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FILE:

Office: ST. PAUL, MN

Date: JUN 01 2007

IN RE:

APPLICATION:

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

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, St. Paul, denied the Application for Waiver of Ground of Inadmissibility. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] (Mr. [REDACTED]) is a native and citizen of the United Kingdom, and also a citizen of Nigeria, who was found to be inadmissible to the United States 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 present unlawfully in the United States for one year or more and seeking admission within ten years of the date of his last departure or removal from the United States. The applicant 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 with his U.S. citizen wife and child. The district director concluded that the applicant failed to establish that extreme hardship would be imposed on his wife, [REDACTED] (Mrs. [REDACTED]) if he were not granted a waiver and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *District Director Decision*, dated April 28, 2006.

On appeal, the applicant, through counsel, contends that the district director applied “the wrong standard, in that 1) Mr. and Mrs. [REDACTED] are required to establish extreme hardship, but are not required to prove he cannot earn \$70,000 in his home country and 2) Mrs. [REDACTED] country of birth is not relevant to the determination.” *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-200B)*, filed May 23, 2006; *Brief in Support of Appeal*, filed May 23, 2006. The AAO notes that Mrs. [REDACTED] country of birth, Nigeria, is relevant in assessing what ties she might have there or what country conditions might cause her hardship in the event she would choose to relocate there with her husband. Indeed, in her brief, counsel raises the issue of hardship to Mrs. [REDACTED] in Nigeria.

On appeal, the applicant claims that his wife would suffer extreme hardship if he had to return to Nigeria or England. Through counsel, he asserts that Mrs. [REDACTED] will not return to Nigeria and has no immigrant status to allow her to live in England; that neither he nor Mrs. [REDACTED] has ties to Nigeria; that country conditions in both Nigeria and England would make it difficult for them to live there safely or earn sufficient income; that, if he cannot remain in the United States, Mrs. [REDACTED] will suffer emotionally due to the loss of her husband and because she will witness her child suffering the loss of his father; and that she will suffer financially because she is studying for her nursing degree and unemployed, while Mr. [REDACTED] currently earns \$75,000 per year. *Brief in Support of Appeal, supra*. In support of these assertions, the record includes (1) assessments of cost of living and employment opportunities in the United Kingdom, provided by various websites accessed in June 2006; (2) U.S. Department of State Travel Warning for Nigeria, dated February 17, 2006, noting that violent crime is a problem throughout Nigeria, religious tension between some Muslim and Christian communities results in occasional acts of isolated communal violence in certain regions, and road travel is dangerous; and (3) U.S. Department of State, *Country Reports on Human Rights Practices – 2005 (Reports)*, Chapters on the United Kingdom and Nigeria, issued March 8, 2006, indicating, *inter alia*, that Nigeria’s human rights record remained poor, and that the U.K. government generally respected the human rights of its citizens, while certain problems were reported.

The record also includes:

Biographic Information (Form G-325A), dated October 8, 2004, for Mr. and Mrs. [REDACTED] indicating that Mr. [REDACTED] worked in the United Kingdom as a computer technician from July 1995 to August 1996 and after that in the United States, primarily as a wireless technician, and that his parents reside in Nigeria; and that Mrs. [REDACTED] worked in Nigeria for [REDACTED] as a human resources manager from September 1996 to December 1998 and after that in the United States from 1999 to 2004, and that her father is deceased and her mother resides in Nigeria.

The couple's marriage certificate showing they married in Illinois in November 2003; their son's birth certificate showing that he was born in Minnesota in September 2004; Mrs. [REDACTED] Certificate of Naturalization, issued on July 14, 2004; and Mr. [REDACTED] passport, showing his birth in the United Kingdom (London) on November 18, 1972.

Mr. [REDACTED] Affidavit, dated October 17, 2005, in which he states that he was born in London when his parents were students there, but they returned to Nigeria in 1974, where he grew up and was educated through college. He states that he returned to the United Kingdom in 1995 and worked at McDonalds for below standard wages and as a computer operator without wages in order to gain experience; after about a year he moved to the United States where he has lived since. He claims that he has no relatives in the United Kingdom, no work experience there, and that his skills were acquired in the United States and are generally not useable in the United Kingdom; he also states that his wife, as a U.S. citizen will be given only a three-month permission to stay in the United Kingdom and will have to wait three years to get the necessary documentation for employment, which is not guaranteed. He states that Nigeria would be his only option if forced to leave the United States, but that he and his family would face "unimaginable suffering" in part due to the poverty and unemployment there and the fact that his aging parents are semi-retired.

Mrs. [REDACTED] Affidavit, dated October 17, 2005, in which she states that she is totally dependent on her husband, emotionally, financially and personally, as they live in a small town with no support group; that he is the only one who can help care for their son; that she is a full time student and her husband is the sole wage earner; and that she and her son have health care through her husband's employment. She states that she has incurred school loans of over \$30,000 and cannot afford to stop her studies before she obtains her nursing degree, and that the family's expenses amount to over \$4000 per month, an amount she could not earn.

Numerous school records indicating that Mr. [REDACTED] attended university in Nigeria and studied computer technology there.

Numerous financial documents as evidence of the couple's income and expenses. These include statements of loans and payments due for a mortgage, car payments, and school loans; employment records for Mr. [REDACTED] showing a 2005 salary of \$74,484; tax records for 2004 showing joint earnings of approximately \$66,000; an Affidavit of Support (Form I-864) stating Mrs. [REDACTED] 2003 income as \$31,002; wage and tax statements for Mrs. [REDACTED] indicating that her income in 2002 was approximately \$49,000 and the same for 2001. A letter from the Manager of Amtrak Human Resources Operation, dated October 11, 2004, confirms that Mrs. [REDACTED] had been

employed as a temporary contract worker with Amtrak since November 2000, her most recent assignment concluding on July 30, 2004.

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 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.

Regarding the applicant's ground of inadmissibility, the record reflects that the applicant entered the United States in 1996 under the Visa Waiver Program with authorization to remain for 90 days. He remained without authorization until he traveled to the United Kingdom in March 2003. He returned to the United States the following month. He thus accrued over a year of unlawful presence. The applicant is seeking admission within 10 years of his last departure and is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year. The applicant does not contest this finding.

A section 212(a)(9)(B)(v) waiver of the bar to admission under section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself or his child would experience is not a permissible consideration under the statute and will be considered only insofar as it results in hardship to a qualifying relative. In this case, Mrs. Layokun, the applicant's U.S. citizen spouse, is the applicant's sole qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Moralez*, 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. In examining whether extreme hardship has been established, 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). In addition, U.S. courts have held that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and that “[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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, “[e]conomic disadvantage alone does not constitute “extreme hardship.” *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (“lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient”); *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (“the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy”); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

Courts have also recognized, however, that in certain cases economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. “Included among these are the personal hardships which flow naturally from an economic loss, decreased health care, educational opportunities, and general material welfare.” *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); *see also Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th cir. 1981) (“Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief. . . . But deportation may also result in the loss of all that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the “economic” character of the hardship makes it no less severe.”).

The record in this case indicates that the applicant was born in 1972 in the United Kingdom but was raised and educated primarily in Nigeria; he has lived and worked in the United States since 1996. His spouse was born in 1970 in Nigeria, where she resided until she came to the United States in 1999; she became a U.S. citizen in 2004. The couple married in 2003 and had a child the following year; they reside in a small town in Minnesota. Mrs. [REDACTED] is studying to be a nurse; Mr. [REDACTED] works for Midwest Wireless Holdings as a Director of Product Management, earning an annual salary of \$74,493. Mr. and Mrs. [REDACTED] state that they have no family in the United States, no ties to the United Kingdom, and few ties to Nigeria. They have provided evidence that they are financially dependent on Mr. [REDACTED]'s salary to cover their expenses, which include mortgage and car payments and payments on student loans. They state that if Mr. [REDACTED] could not remain in the United States they would not be able to pay their debts, and that Mrs. [REDACTED] would be forced to give up her plans to have a nursing career; and she would become a single mother with no support system without her husband, facing all the difficulties that accompany such status as well as overwhelming financial difficulties.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she accompanies him or in the event that she remains in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The AAO recognizes that Mrs. [REDACTED] would suffer the hardship of separation, financially, emotionally and personally, if her husband were not allowed to remain and work in the United States. The [REDACTED] have acquired a hefty debt and have expenses that would be beyond their ability to pay without Mr. [REDACTED] current salary. Paying their debts will be difficult, as it is for others, in the United States or the United Kingdom or Nigeria, and whether Mrs. [REDACTED] works in the United States or overseas. This may mean placing her education on hold. However, given her work history in the United States, it is clear that she would be able to support herself with full time work and, as there is every indication that Mr. [REDACTED] has the education and ability to find employment in both Nigeria and the United Kingdom, additional financial support from his income would assist her in this endeavor. Her lifestyle would change significantly, but as noted above, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy." *Shooshtary v. INS, supra*. Without family or a support system in the small town where they currently reside, Mrs. Layokun will clearly miss the support of her husband, and this hardship is not discounted. However, based on the record, her situation is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS, 927 F.2d 465, 468 (9th Cir. 1991)*.

The AAO also recognizes that if Mrs. [REDACTED] chose to accompany her husband to the United Kingdom or Nigeria to avoid the hardship of separation, although the move would mean leaving their current home and her husband's current employment, such a move would not represent an extreme hardship. Despite reports in the record regarding problems in Nigeria and the high cost of living in the United Kingdom, the AAO finds those accounts to have little relevance to the individual circumstances of Mr. and Mrs. [REDACTED]. They are both well educated and have not depended on family or community support in the past to maintain their lifestyle. Mrs. [REDACTED] can emigrate to the United Kingdom, though as with any immigration regime, there

are processing requirements to follow. The applicant's claim that his education has been focused on U.S. systems and his skills are not transferable to the United Kingdom is not supported by evidence in the record. The evidence shows that he was educated in Nigeria and has had some experience in the United Kingdom in his field of expertise; the evidence also shows that Mrs. [REDACTED] worked for two years in Nigeria before coming to the United States. Although the applicant and his family currently depend on his U.S. employment for health care, there is no evidence to support his assertions that health care would not be available in the United Kingdom. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Although the record reflects that the couple would prefer to live and work in the United States, there is no evidence in the record that if Mrs. [REDACTED] and their child moved to the United Kingdom or to Nigeria to avoid the difficulties of separation, they would be unable to adjust to that change or that she would suffer extreme hardship as a result. If Mrs. [REDACTED] decides to remain in the United States, separated from her husband, she will suffer hardship due to the absence of her spouse, but there is no evidence to support a conclusion that this hardship is extreme.

Upon review, the applicant has not established that his wife will experience extreme hardship if he is denied a waiver of inadmissibility. The AAO recognizes that, as with any marriage, the applicant's wife will endure hardship as a result of separation from the applicant should she remain in the United States; and that a move to the United Kingdom or Nigeria will also present difficulties, including the challenge of finding work and the hardship that results from separation from a customary lifestyle and surroundings. However, based on the record, her situation is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship. For example, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that 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 individuals who are deported.

Based on the foregoing, if the applicant is barred from returning to the United States for ten years, pursuant to section 212(a)(9)(B)(i)(II) of the Act, the instances of hardship that will be experienced by his wife, considered in the aggregate, do not rise to the level of extreme hardship. 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)(9)(B) 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.