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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: BALTIMORE, MARYLAND Date: JUN 10 2004

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Nigeria. He was found to be inadmissible to the United States pursuant to 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 admission into the United States by fraud and willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative filed by his U.S. citizen spouse. He 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 and reside with his U.S. citizen spouse and child.

The Acting District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Acting District Director's Decision* dated March 18, 2003.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (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.

Section 212(i) of the Act provides that:

> (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.

After reviewing the amendments to the Act regarding fraud and misrepresentation and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

To recapitulate, the record clearly reflects and the applicant admitted that in May 2000 he obtained a fraudulent passport and visa and used that passport in order to gain entry into the United States. The applicant was admitted as a nonimmigrant visitor for pleasure. He remained in the United States beyond his authorized stay and married a U.S. citizen on March 27, 2001.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family

member. 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).

In the present case, the applicant must demonstrate extreme hardship to his U.S. citizen spouse.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the BIA deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; 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; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, counsel states that the Acting District Director abused his discretion by failing to consider all the factors favorable to the applicant and he misapplied or misinterpreted the law in denying the waiver application. Additionally counsel states that the Acting District Director failed to correctly assess the extreme hardship the applicant's spouse would suffer if the applicant's waiver application were denied and he is forced to depart the country. Counsel submits a brief, affidavits from the applicant and his spouse and a psychological evaluation on behalf of the applicant's spouse

Before the AAO can look into the favorable and unfavorable factors in this case it must first determine if the qualifying family member would suffer extreme hardship if the applicant's waiver application were not approved.

The psychological evaluation submitted on behalf of Ms. was based on one visit and states that she suffers from chronic dysthymia with a rapidly emerging and more serious major depressive disorder highly likely. The evaluation states that Ms has the following symptoms: depressive and hopeless ideation and mood, sleep disturbance, carbohydrate cravings, anhedonia, crying spells, irritability, generalized increased anxiety and obsessional rumination about her current difficulties. The psychologist states that although M has very severe levels of anxiety and agitation she is not in an imminent danger to herself or to her child. The May 16, 2003, evaluation recommends that Ms. receive psychiatric evaluation and treatment. The psychologist's evaluation does not mention if her condition can be treated in Nigeria if she decides to relocate. Nor is there any indication that Ms. followed the recommendation to seek psychiatric treatment.

In her affidavit dated September 9, 2002, Ms. states that she is suffering from complications from the birth of her child, which occurred in August 2002. She states that her blood sugar is elevated and that she is scheduled for gall bladder surgery and she suffers from diabetes. No documentary evidence was provided to substantiate that Ms. did not recover from her surgery or that she cannot take care of herself and her daily chores. Ms. receives medication for her diabetes and there is no independent corroboration to show that her medical or psychological condition will be jeopardized if she decides to relocate to Nigeria with the applicant.

On appeal counsel states that if the applicant and his family relocate to Nigeria the applicant would have a difficult time finding employment due to the unemployment rate. Additionally counsel states that Ms. would not be able to procure employment. The record contains no evidence besides counsel's statement, which is general in nature and does not substantiate the claim that the applicant would be unable to find work in Nigeria.

There are no laws that require Ms r her child to leave the United States and live abroad. 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." 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).

Counsel further states that the applicant's U.S. citizen child would suffer hardship due to the lack of adequate educational opportunities in Nigeria.

As mentioned, section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the qualifying family member, citizen or lawfully resident *spouse or parent* of such alien. Congress specifically did not mention extreme hardship to a U.S. citizen or resident child. The assertions regarding the hardship the applicant's child would suffer will thus not be considered.

In his brief counsel points out the hardship to the applicant himself and refers to previous Board of Immigration Appeals (BIA) decisions. The BIA decisions counsel refers to dealt with suspension of deportation where hardship to the applicant is taken into consideration. "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(h) waiver of inadmissibility. *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *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 aliens being deported. The U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.