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U.S. Department of Homeland Security
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Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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[REDACTED]

FILE:

[REDACTED]

Office: SAN FRANCISCO, CA

Date: **AUG 28 2006**

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, San Francisco, CA denied the application for waiver. The matter 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 under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii)(I), for misrepresentation of a material fact having gained admission to the United States using a false passport and visa. The applicant is married to a naturalized U.S. citizen and 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 with her U.S. citizen spouse. It is noted that the applicant previously filed an application for waiver of inadmissibility, which was denied on May 19, 2000 and a previous appeal to the Administrative Appeals Office (AAO) was dismissed on March 7, 2001. A Motion to Reopen and Reconsider was granted and the orders denying the application and dismissing the appeal affirmed by the AAO on December 17, 2001. The applicant subsequently reapplied for adjustment of status and for a waiver of inadmissibility.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on her husband, the only qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director, May 7, 2004.*

Counsel asserts that the applicant's removal from the United States would cause extreme hardship to the applicant's U.S. citizen husband.

The entire record, including material submitted in earlier applications, as well as information submitted in the most recent application and on appeal, has been reviewed and considered in rendering this decision.

INA § 212(a)(6)(C)(ii)(I); 8 U.S.C. § 1182(a)(6)(C)(ii)(I) provides in pertinent part:

In general. Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act ... or any other Federal or State law is inadmissible.

The record reflects that the applicant admitted under oath to an immigration officer that she presented a false passport and visa to gain admission into the United States on March 24, 1996. She is therefore inadmissible under section 212(a)(6)(C)(ii)(I). Inadmissibility is not contested.

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.

A section 212(i) waiver of inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that inadmissibility imposes extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant's children or that the applicant herself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only hardship relevant to eligibility in the present case is the hardship that would be suffered by the applicant's husband if the applicant is removed. If 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems 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.

Counsel through a brief and submission of a psychological evaluation has made the following points in support of the applicant's claim. The applicant's spouse is a naturalized United States citizen who was born and raised in Lagos, Nigeria and has lived in the United States since 1982. He has two children from a previous marriage who reside with their mother, although he visits them on holidays. The applicant and his wife also have two children together. The applicant's husband is a Christian who was raised Muslim. He fears that if he and his family return to Nigeria, they will be subjected to harsh treatment because of his religious conversion from Islam, because the family is Christian, and because his wife was pregnant before he married her. He fears that his daughters may be forced to undergo genital mutilation. He also would be separated from his two daughters from an earlier marriage. Finally, he suffers from high cholesterol and is concerned about heart difficulties as well as knee problems. He does not believe he will be able to obtain or afford adequate medical care in Nigeria. See, *Brief*, Law Office [REDACTED] June 7, 2004; *Psychological Evaluation*, Alison B. Costa, MA, MFT, June 30, 2004.

Counsel contends that, if the applicant's husband remains in the United States and his wife is removed, he would be separated from his wife. He suffers from high cholesterol, diabetes and problems with his knee. He relies on his wife's medical insurance for treatment of both ailments. His daughters would either be separated from him or their mother, and he would either deal with the hardship of separation or of raising the children without their mother as a single parent. See, *Brief*, Law Office [REDACTED] June 7, 2004; *Psychological Evaluation*, Alison B. Costa, MA, MFT, June 30, 2004.

As noted earlier, the applicant has submitted two applications for waiver, two appeals and a motion to reopen the first appeal after it was denied. The record still does not establish the applicant's claim that her husband would suffer extreme hardship if she were removed. The claim that her husband suffers from heart and knee difficulties is made by a psychologist, without supporting documentation from a medical doctor. While there

is no reason to disbelieve the affidavit of a trained professional, she is not qualified to provide a thorough evaluation of the physical condition of the applicant's husband or of the effect that the applicant's removal might have on it. No objective evidence has been provided to support the contention that the applicant's husband would be unable to obtain or afford adequate medical care in Nigeria. An unsupported statement without evidence that the person making the statement is thoroughly familiar with current conditions has very little weight. While the record establishes that the applicant's husband has relied upon his wife's medical insurance in the United States, there has been no showing that he could not acquire medical insurance on his own if his wife departed the country and he remained. There also has been no showing that his medical expenses are such that he would be unable to afford care.

Counsel has overstated the religious difficulties in Nigeria, even as indicated by documents in the record. In the brief, counsel describes Nigeria as "a country that is now governed by the Sharia," as a "fundamentalist Islamic country," and an "Islamic theocracy," *Brief*, p.5. According to the Amnesty International Report submitted by counsel, legislation inspired by Sharia had been gradually introduced in northern Nigeria since 1999, and was applied throughout the year (2002). *Amnesty International, Nigeria, Covering Events from January-December 2002*. While portions of northern Nigeria have seen the application of Sharia, and while the country as a whole has many difficulties, it is an overstatement to claim that Nigeria as a whole is an Islamic theocracy. Counsel has provided no explanation as to why the applicant and her family would be at risk if they lived in a part of Nigeria where Sharia is not applied and that is predominantly Christian. For example, there is no evidence indicating that Lagos, the largest city in Nigeria, is controlled by Islamists or is governed with Sharia. It is noted that, when the applicant traveled to the United States in 1997, she left her daughter with her mother because she feared that her husband's family would circumcise her. *Psychological Evaluation*, p. 4. While the above indicates subjective fear, at least, of the family of applicant's husband, there is no indication that the daughter was at risk while she was staying with the applicant's mother. There is no requirement that the applicant or her husband and family must live with her husband's family if they return to Nigeria.

Counsel contends that previous decisions incorrectly have dismissed hardship to the applicant's children as irrelevant. *Brief*, p. 6. As indicated above, the plain language of INA § 212(a)(6)(C)(ii)(I) requires that USCIS only evaluate whether the applicant's husband or parent would suffer extreme hardship if the applicant were removed in determining eligibility for a waiver. In contrast, other sections of the statute specify that extreme hardship to an applicant's children may be considered when evaluating a waiver application. *See, e.g., INA § 212(h)(1)(B), 8 U.S.C. § 1182(h)(1)(B)*. Therefore in determining eligibility, hardship to the applicant's children may be considered only with regard to the effect that their hardship would have on the applicant's husband. Any hardship to the children could also be a factor if eligibility is established, in determining whether to exercise discretion favorably. It is noted that the applicant has established that her husband cares about his family and would be affected if he was separated from his children and if any harm befell them. However, it is also noted that the applicant has not established that the children would be at risk of harm if they returned to Nigeria. It is also noted that they are United States citizens and not required to return to Nigeria with their mother. The record does not indicate that the difficulties that the applicant's children would endure if the applicant were removed constitute extreme hardship to the applicant's husband.

While not minimizing the difficulties that separation or return to Nigeria would cause for the applicant's family, the applicant has failed to meet her burden of establishing that such difficulties amount to extreme hardship to her husband. U.S. court decisions have held that the common results of removal are insufficient to prove extreme hardship. 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. *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.

The information provided by the applicant is insufficient to demonstrate hardship beyond that which could be described as a common result of removal. The evidence indicates that the applicant's husband would have a difficult time if the applicant were removed to Nigeria regardless of whether he stayed in the United States or moved with her to Nigeria. Those difficulties, regardless of whether he chooses to remain in the United States or to live in Nigeria with his wife, include separation from at least part of his family and a more difficult economic situation. However, the harm that the applicant's husband faces cannot be described as "extreme," or be considered to be more than what would be experienced by a typical individual facing separation caused by the removal of his spouse. There is nothing in the record to indicate that the applicant's husband would be unable to continue to function or work despite his physical problems. While there will be more financial pressure, nothing indicates that the applicant's husband would not be able to support himself. The evidence does not indicate that the health problems of the applicant's husband immediately threaten his life or make it impossible to work. Taken in its entirety, the record indicates that the difficulties that the applicant's husband faces are substantial but do not amount to "extreme hardship" under the Act.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. 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 application for waiver of grounds of inadmissibility the burden of proving eligibility is on 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.