U.S. Department of Homeland Security
20 Mass, Rm. 3000, N.W.
Washington, DC 20529

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U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: ATLANTA, GA Date: JUL 19 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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Atlanta, GA, and 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 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)(i), for having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. The applicant 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 his U.S. citizen spouse.

The district director concluded that the applicant is ineligible for the waiver sought. *Decision of the District Director*, January 19, 2005.

On appeal, counsel asserts that the district director ignored the evidence and testimony of extreme hardship to the applicant's U.S. citizen spouse and failed to mention any evidence in her decision. Counsel also asserts that the applicant presented sufficient evidence that his U.S. citizen spouse would suffer extreme hardship as a result of his inadmissibility. *Counsel's Brief*, dated February 17, 2005.

The record reflects that on November 30, 2004, during the applicant's adjustment interview, he admitted that on September 14, 1994, he used a false passport and visitor visa to procure entry into the United States.

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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. 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).

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

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of the departure of the applicant from the United States. The applicant's spouse relies on the applicant emotionally, physically and financially. The applicant's spouse states that she had been in prior abusive relationships and the applicant has taught her acceptance, understanding and patience. The applicant's spouse also states that she has four children who she gave up parental rights for and is currently trying to gain those rights back. The applicant's spouse also has medical problems and cannot work. On November 8, 2004 the applicant's spouse took medical leave from work in order to care for her mother. *See Medical Leave Statement*, dated November 8, 2004. In the spouse's statement dated February 10, 2005 she states that on December 1, 2004 she returned to work and on December 15, 2004 she was taken to the hospital for chest pains and difficulty breathing. On December 28, 2004, the applicant took her to the emergency room with the same symptoms. On January 25, 2005 the applicant's spouse went to see a cardiologist, Dr. [redacted] who thinks that she may have suffered a mild stroke, but more tests would need to be done before a final conclusion could be made. The applicant's spouse submitted an undated note from Dr. [redacted] which states that the testing would be performed in two weeks and if the tests were okay then the applicant's spouse could return to work. The AAO notes that no further evidence as to the applicant's spouse's condition has been submitted. The documents submitted with the appeal show that the applicant's spouse was unable to work and was fully relying on the applicant for financial, emotional and physical support. However, the record does not reflect that the applicant's spouse is permanently unable to return to work and continues to rely on the applicant for support. The AAO cannot make a final determination that the applicant's spouse will suffer extreme hardship as a result of the applicant's removal from the United States without evidence establishing that the applicant's spouse's condition is a long-term problem requiring the assistance of the applicant. Thus, the current record does not establish that the applicant's spouse will suffer extreme hardship as a result of the applicant's removal from the United States.

The applicant's spouse has established that she would suffer extreme hardship as a result of relocating to Nigeria. As noted above, the applicant's spouse is trying to gain the parental rights of her four children. If she relocates to Nigeria she will not be able to bring her children with her and will suffer from emotional separation. The applicant's spouse states that she has no family in Nigeria and fears for her health and safety if she were to relocate. The applicant submitted country condition reports stating that Nigeria's human rights record remains poor and that women are discriminated against and harassed. The 2005 State Department Human Rights Report for Nigeria states that the government's human rights record remained poor and there was violence and discrimination against women. Taking into consideration the health problems of the applicant's spouse, her family ties to the United States, and the country conditions information submitted on

Nigeria the applicant has established that she would suffer extreme hardship if she were to relocate to Nigeria with the applicant.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval 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.