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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CHICAGO, ILLINOIS Date: MAY 30 2006

IN RE: [redacted]

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

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, Chief
Administrative Appeals Office

**DISCUSSION**: The waiver application was denied by the District Director, Chicago, Illinois. The matter 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 who is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. The applicant was found to be inadmissible to the United States pursuant to § 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility in order to remain with his wife and children in the United States.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and children. The application was denied accordingly. On appeal, counsel asserts that the district director failed to consider any evidence submitted beyond the Form I-601 waiver application and the applicant's child's birth certificate. Counsel asserts that the applicant's wife suffers from mental and physical disabilities that contribute to the hardship she would suffer in the applicant's absence, to the extent that the hardship should be considered extreme. Counsel notes that two of the applicant's wife's children are disabled. Counsel also maintains that the applicant entered the United States only once without inspection, contrary to the district director's claim. The AAO has reviewed the evidence on the record in rendering this decision.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) states in pertinent part that:

> (h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-
>
> > (1)(A) [I]t is established to the satisfaction of the Attorney General that-
> >
> > > (i) [T]he activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
> >
> > > (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
> >
> > > (iii) the alien has been rehabilitated; or
> >
> > (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission

would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.

The applicant was convicted of possession of a fraudulent identification card on July 2, 1995 in Cook County Circuit Court. As the criminal conduct occurred less than 15 years prior to his application for adjustment of status, the applicant is statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. He is, however, eligible to apply for a waiver of inadmissibility pursuant to § 212(h)(B) of the Act.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999) the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

In her statement dated October 25, 1999, the applicant's spouse wrote that she has suffered from manic-depressive syndrome all her life, and she has never supported herself. She wrote that she has been receiving supplemental security income (SSI) checks since the age of twelve, because she is disabled. She stated that the applicant's absence would exacerbate her mental condition. She also pointed out that the applicant supports her and her three youngest children, aged twenty three, eighteen, and eleven, and if he were removed, their economic status would be greatly reduced. She did not address the possibility of relocating to Nigeria to accompany the applicant. Counsel adds that the applicant's wife suffered an injury as a result of an accident that has greatly diminished her physical mobility. Counsel asserts that she is more dependent on the applicant than before, due to this injury.

The record contains Social Security Administration documentation of the applicant's wife's monthly SSI payments due to an unnamed disability. There is no documentation regarding the nature or degree of severity of her psychiatric condition, and the evidence regarding her herniated disk does not establish that she requires any assistance to carry out her normal activities. The record contains a letter by [redacted] D.C. dated December 18, 2002, in which the chiropractor wrote that the applicant's wife had been receiving regular therapy for about six weeks and that she was making slow but consistent progress. The AAO is unable to determine from the evidence on the record that the applicant's absence would cause his wife to suffer greater emotional or physical hardship than other spouses of removed individuals.

Also, given that all of the applicant's wife's children are over eighteen years of age, and in view of the lack of evidence regarding their financial dependence on the applicant, it cannot be concluded that the applicant's stepchildren would suffer greater than usual financial hardship on account of the applicant's inadmissibility. Although it is presumed that the applicant's natural child of this marriage depends financially on the applicant, the record does not establish that the applicant's son's situation would be worse than other children of removed individuals. The evidence also does not establish that the applicant would be unable to contribute to his family's finances from a location outside the United States, or that the applicant's wife would be unable

to meet her financial responsibilities in the applicant's absence. Finally, the record contains no evidence or assertions regarding the possibility of the applicant's wife relocating to Nigeria.

The applicant's wife and counsel wrote that she is disabled due to psychiatric illness. The record, however, does not include any medical documentation to this effect. 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)). Moreover, without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof and do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO acknowleges that the applicant's wife will suffer hardship as a result of the applicant's inadmissibility; however, the evidence on the record does not show that her hardship exceeds that which other, similarly situated individuals experience. U.S. court decisions have held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (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), 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. Moreover, the U.S. Supreme Court 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.

The totality of the documentation in the record does not establish that the applicant's U.S. citizen spouse and children would suffer hardship that was unusual or beyond that which would normally be expected upon removal. 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 § 212(h) 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.