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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: CLEVELAND, OH Date: JUL 19 2007

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Cleveland, Ohio and 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 was found to be inadmissible to the United States pursuant to section 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 is married to a U.S. citizen and has two U.S. citizen children. He applicant seeks a waiver of inadmissibility in order to reside with his wife and children in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See District Director's Decision,* dated March 21, 2007.

On appeal, counsel contends that the applicant has presented sufficient evidence to support the approval of the Form I-601, Application for Waiver of Ground of Excludability. He also asserts that the district director erred in finding that the applicant's spouse had failed to submit any evidence that she would suffer extreme hardship. The district director, counsel states, also misinterpreted the opinions in *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1988) and in *Carnalla-Munoz v. INS,* 627 F.2d 1004 (9th Cir. 1980).

The record indicates that the applicant, on August 23, 2003, attempted to enter the United States with two counterfeit U.S. immigration Form I-551 stamps. On February 13, 2004, he was convicted in U.S. District Court, Eastern District of Virginia, Alexandria Division, of one count of possession of an immigration permit, plate or impression in violation of 18 U.S.C. § 1546(a) and sentenced to 12 months and one day in prison, to be followed by three years of supervised release.

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 [now Secretary of Homeland Security]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.

As less than 15 years have passed since the actions that resulted in the applicant's conviction, he is statutorily ineligible for a waiver of admissibility under section 212(h)(1)(A) of the Act. He is however, eligible to apply for a waiver pursuant to section 212(h)(B) of the Act.

A section 212(h)(B) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship the alien himself experiences due to separation is irrelevant to section 212(h)(B) waiver proceedings unless it causes hardship to the applicant's spouse and children. 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).

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 alien 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. The age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). 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).

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, 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), 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 AAO notes that extreme hardship to the applicant's spouse and children must be established in the event that they reside in Nigeria or in the event that they reside in the United States, as they are not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO now turns to a consideration of the relevant factors in this case.

Evidence submitted by the applicant in support of his waiver application includes but is not limited to: affidavits from the applicant and his spouse; a copy of the applicant's marriage certificate, copies of the birth certificates for the applicant's two children; a letter and medical documentation related to one of the applicant's children; letters of support from the applicant's in-laws and his priest; a letter from the applicant's probation officer; the applicant's academic records; a news report of religious violence in Nigeria; employment letters for the applicant and his spouse; tax returns and bank statements for the applicant and his spouse and a letter from the Selective Service System regarding the applicant's registration for military service.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse, [redacted], or children in the event that they reside in Nigeria. The applicant asserts that Nigeria has a history of religious warfare and conflict, and that [redacted] and his children, as Christians and Americans, would be at risk from Muslim extremists if they were to reside in Nigeria. He also reports that his oldest child has a heart condition for which it would be difficult or impossible to obtain proper medical care in Nigeria. To support his claims regarding the risk to [redacted] and his children from religious extremists in Nigeria, the applicant has submitted a copy of a February 22, 2006 BBC article on sectarian violence in Onitsha, Nigeria, the applicant's home, which reports a Nigerian Christian attack on Muslims in reprisal for anti-Christian violence in the northern part of the country. To establish his son's medical condition, the applicant has provided an April 3, 2007 letter from [redacted] at the Children's Hospital in Akron, Ohio, who indicates that the child has an insignificant atrial level shunt and a mild pulmonary stenosis that requires the administration of antibiotics prior to any dental or surgical procedure. [redacted]s letter states that the child should be seen again in approximately one year.

In her affidavit on appeal, [redacted] asserts that she has always lived with or nearby her parents and that it would be a great hardship for her to be separated from them. Letters from [redacted]s parents indicate their belief that removing the applicant from the United States would obligate their daughter and grandchildren to relocate to Nigeria depriving her of an education and denying the children their right to live in the United States. [redacted]s mother also indicates that the removal of the applicant would place a financial strain on the entire family.

While the record does not offer any documentation to establish that the applicant's child would be unable to obtain proper health care in Nigeria for his heart condition, it does demonstrate the existence of a medical

condition that could prove problematic were the child to require dental work or surgery. Further, the AAO notes that the Department of State's January 19, 2007 extension of its travel warning for Nigeria supports the applicant's concerns for the safety of [redacted] and his children should they relocate with him to Onitsha. The extended travel warning advises U.S. citizens not to travel to the Niger Delta, the region of Nigeria in which the applicant's home is located, citing the significant deterioration in security, including the taking of American hostages and violent clashes between rival ethnic groups. When considered in the aggregate, the heart condition of one of the applicant's children, the security situation in the Niger Delta and the separation of [redacted] from her U.S. family are sufficient to establish that [redacted] and her children would experience extreme hardship if they attempted to reside with the applicant in Nigeria.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse and children remain in the United States. On appeal, both the applicant and [redacted] assert that it would be a tremendous hardship on her to have their children grow up without their father. They also state that they fear the effect that growing up without the "influence, love and support of a father" would have on the children. The record, however, offers no documentary evidence to support their claims, e.g., an evaluation from a licensed health care professional regarding the impact that the applicant's absence would have on [redacted] or his children. Going on record without supporting documentary evidence is not sufficient to meet the burden of proof in this proceeding. *See 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)).

When reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, the record does not support a finding that [redacted] would face extreme hardship if the applicant were removed and she and their children remained in the United States. The applicant has submitted no evidence to establish that his removal would result in distress or difficulties for [redacted] or his children that would exceed those normally associated with the removal of a spouse and father. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and emotional and social interdependence. While the prospect of separation or relocation nearly always results in considerable hardship to the individuals and families involved, the Congress, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," did not intend that a waiver be granted in every case where a qualifying relationship and, thus, familial and emotional bonds exist. The point made in this and prior AAO decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(h) of the Act, be above and beyond the normal, expected hardship involved in such cases.

As the record fails to establish that the applicant's spouse or children would experience extreme hardship if they remained in the United States following his removal, the applicant is not eligible for a waiver under section 212(h) of the Act. In that the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion. Accordingly, the AAO will not assess the relative weights of the positive and negative factors in the present case.

On appeal, counsel expresses concern regarding the manner in which the district director exercised the Secretary's discretion in the present case. The AAO notes that the district director's discussion of *Matter of Tijam* in his decision appears to indicate that he reached his decision on extreme hardship through the exercise of discretion, weighing the positive and negative factors as established by the record. However, the

determination of extreme hardship in a 212(h) case is not reached through the exercise of the Secretary's discretion, but is based on an applicant's statutory eligibility. As previously discussed, the exercise of discretion occurs once CIS has determined that an applicant has established that a qualifying relative(s) would suffer extreme hardship. In that the district director's reference to *Carnalla-Munoz v. INS* reflects his understanding that the exercise of discretion follows a finding of extreme hardship, it is not clear that his citing of *Matter of Tijam* in his discussion of extreme hardship accurately represents the basis for his decision. However, to the extent that the district director may have relied upon a discretionary weighing of positive and negative factors to reach his decision on extreme hardship in the present case, he erred.

On appeal, counsel also requests the opportunity to make an oral argument regarding the issues in this matter, stating only that the factual history in the case is easily subject to misinterpretation. By regulation, the party requesting oral argument must explain in writing why an oral argument is necessary. Further, CIS, which has the sole authority to grant or deny a request for oral argument, will grant such argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, counsel identifies no such factors or issues, nor offers any specific reasons why oral argument should be held. The AAO finds the written record of proceedings to fully represent the facts and issues in this case and, consequently, denies the request for oral argument.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) 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.