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

[redacted] PUBLIC COPY

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FILE: [redacted] Office: DENVER, COLORADO Date: JUN 14 2007

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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, Denver, Colorado, 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 to be inadmissible to the United States under § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having misrepresented material facts in order to gain a benefit under the Act. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to § 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 had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. On appeal, counsel contends that the applicant did not wilfully misrepresent any fact to the consular officer, and even if he mistakenly misrepresented a fact, this was not material to his obtaining a U.S. visa. Counsel also maintains that Citizenship and Immigration Services (CIS) failed to consider all the evidence of record, which counsel contends establishes that the applicant's wife would experience extreme hardship if the applicant were removed.

The record contains copies of the following documents: the applicant's current marriage certificate; the divorce certificate from the applicant's first marriage; birth certificates for his children from his first marriage; the applicant's nonimmigrant visa application dated August 23, 2001; a letter dated March 12, 2004 by the applicant's wife, who stated that she was living with the applicant; a letter by [redacted] witness to the fact that the applicant's wife was living with her mother; various financial and tax documents for the applicant and his wife; and other material. The entire record was reviewed and considered in rendering this decision.

On appeal, counsel asserts that waivers of inadmissibility pursuant to § 212(i) of the Act are not normally adjudicated in conjunction with adjustment of status applications. Citing *Matter of Gordon*, Int. Dec. 2796 (BIA 1980), a case that dealt with waivers under § 212(c) of the Act, counsel contends that § 212(i) waivers of inadmissibility are more properly adjudicated by immigration judges in removal proceedings. Counsel fails to provide any legal or factual support for this point of view. The AAO points out that issues pertaining to § 212(c) waivers (a category no longer available) are irrelevant to waivers under § 212(i) of the Act. Moreover, the regulations at 8 C.F.R. § 212.7(a)(ii) clearly state that a Form I-601 waiver application must be filed with the district director or Immigration Judge considering the application for adjustment of status. In this case, the official who adjudicated the adjustment application is the district director; hence, the Form I-601 must also be adjudicated by the district director.

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.

The record reflects that the applicant made a willful misrepresentation of a material fact by listing his former wife's name in block #13 under "marital status" on the nonimmigrant visa application through which he obtained his visitor visa on August 23, 2001. Although the applicant did not check a specific box within the block, such as "married" or "divorced", he wrote the name of the woman from whom he had been divorced since 1999. Above her name, the form states "If married, give name and nationality of spouse." This would reasonably lead the consular officer to believe the applicant was married at the time of the visa application, a factor constituting a substantial tie to his native country, and as such, a material fact.

On appeal, counsel asserts that the applicant mistakenly believed he was still married when he applied for his visitor visa, because he was living on and off with his first wife. Counsel also states that the applicant's former wife told the applicant that the March 29, 1999 date on their divorce certificate should have read March 29, 2001. Counsel's explanations in this regard are unpursuasive and illogical. The date proffered as the real divorce certificate date still preceded the date the applicant submitted his nonimmigrant visa request, and there is no evidence on the record to establish that he was unaware of his divorce. Counsel also contends that it is not possible to determine the weight given to the applicant's marital status by the consular officer. Hence, in counsel's view, the misrepresentation about the applicant's marital status was not material. Again, the AAO finds this contention unpursuasive. In addition to local employment, property, and other material concerns, marriage remains one of the strongest domestic ties under consideration in any given visitor visa application. Portraying oneself as married when a visa applicant is, in fact, divorced, constitutes a material misrepresentation.

A § 212(i) waiver of the bar to admission resulting from violation of § 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 herself experiences upon deportation is irrelevant to § 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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, 565-566 (BIA 1999) provides a list of factors the Board 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.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of relocating to Nigeria to remain with the applicant, as she has no ties in Nigeria, she fears she would be unemployable there, and she believes that she will not find adequate health care in that country. The record contains no evidence to establish that the applicant's wife would suffer greater than usual emotional hardship upon separation from her family. The record also does not include evidence regarding the applicant's employment outlook in Nigeria or the health care situation specifically applicable to her case. There is no documentation in support of the contention that she would suffer extreme hardship should she move to Nigeria.

The record also does not establish extreme hardship to the applicant's spouse if she remains in the United States. Counsel refers to the applicant's wife's medical problems and how they render the applicant's presence necessary to his wife's health. In her statement dated March 12, 2004, the applicant's wife wrote that the applicant provided her financial support and took her to the doctor. The applicant's wife also wrote that she was working and was living with the applicant. The AAO notes that the record contains a letter written by Stacy Blackman, apparently a family friend, who describes how the applicant's wife was living with her mother until her health improved. These two letters appear to be inconsistent. In any case, the medical documentation on the record does not indicate what, if any, specific illness afflicted the applicant's wife. The most recent document, dated March 14, 2004, from the Medical Center of Aurora, contains the notation "liver mass" and instructed the applicant's wife to consult her physician. There is no further information about this or any other subsequent health condition, although the appeal at hand was submitted in January 2005. The AAO is unable to conclude, based on the information of record, that the applicant's wife requires the applicant's presence due to any illness or condition. Moreover, there is no evidence that the applicant's wife is unable to work. Regarding a possible financial change provoked by the applicant's removal, it is noted that 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 AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation is typical to individuals separated as a result of removal and does not rise to a level of hardship that could be considered extreme. 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.

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 § 212(a)(6)(C) 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.[1]

ORDER: The appeal is dismissed.

[1] The AAO also notes that the applicant's Form I-130 petition for alien relative was denied on the same date as the Forms I-485 and I-601. An appeal of that denial was filed with the Board of Immigration Appeals (BIA). The BIA dismissed the appeal on November 28, 2005. As it appears that there is no underlying petition, the Form I-601 must be denied for that reason as well.