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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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PUBLIC COPY

[redacted]

FILE: [redacted] Office: ALBANY, NEW YORK Date: MAY 03 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Albany, New York. 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 entered the United States with an artists' and entertainers' visa on November 5, 1997. The applicant was authorized to remain in the United States until November 15, 1997, but he failed to depart. The applicant married a U.S. citizen, and he is the beneficiary of any approved petiton for alien relative. On September 25, 2003, the applicant filed an application to adjust his status, but he was found to be inadmissible 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 crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility in order to remain with his wife and stepchildren in the United States.

The officer in charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. On appeal, counsel asserts that the additional evidence submitted on appeal establishes that due to her medical problems, the applicant's wife will suffer extreme hardship in the applicant's absence. On appeal, counsel submits a revised waiver application Form I-601, an affidavit by the applicant's wife, a letter written by his young stepdaughter, a letter from a physician, and a letter from a Nigerian hospital. The AAO has reviewed the entire body of evidence and concurs with the officer in charge's determination in this matter.

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 arrested March 15, 2002 and was subsequently convicted of third degree forgery and resisting arrest. He was again arrested on July 4, 2002 and was later convicted of attempted criminal possession of stolen property and forgery. As these activities, which involve moral turpitude, occurred less than fifteen years prior to the application to adjust 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.

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), 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. Moreover, the U.S. Supreme Court additionally 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.

Counsel asserts that the applicant's wife would suffer extreme hardship whether she remains in the United States without the applicant or relocates to Nigeria to accompany him, in the event he is removed. Counsel contends that the applicant's wife's medical condition renders her unable to care for herself or her children without the applicant's assistance. Counsel also maintains that the applicant's wife would not be able to obtain adequate medical care in Nigeria.

According to a letter dated July 28, 2005, written by [redacted]., the applicant's wife suffers from recurrent acute blood problems which will most likely require life-long treatment. Dr. [redacted] wrote that the applicant's wife depends on her family for assistance with her care. The record includes another document from Dr. [redacted], dated August 25, 2004, which indicates that the applicant's wife was seen in connection with an application for disability benefits. There is no information on the record regarding whether the applicant's

spouse was determined to be disabled. The applicant's wife wrote in her affidavit of September 27, 2004 that she suffers from a condition that produces blood clots in her leg, causing her to be unable to either sit or stand for lengthy periods. She wrote that she was working only four hours a day, and that the applicant helped her with household chores. On August 10, 2005, the applicant's wife wrote that the applicant drives her and her daughters to appointments and school, and that he also injects her daily with her medication. The applicant's wife stated that she suffers from asthma. The applicant's wife asserted that she would not be able to find proper medical care in Nigeria.

The documentation on the record regarding the applicant's wife's health problems is vague. It is apparent that she takes medication for a recurring condition, but the extent to which this renders her disabled or incapacitated is not supported by independent documentation. For example, the record contains no documentation regarding her mobility, her ability to work, or her detailed prognosis. The record also does not establish that the applicant is the only person available to assist his wife.

The record includes a letter dated August 5, 2005 from a medical officer representing Isolo General Hospital in Isolo, Nigeria. The letter indicates that the applicant's wife will not be able to obtain adequate medical care in Nigeria. This letter is vague, i.e, it refers to general "blood problems" and fails to explain why she will not be able to obtain the necessary therapy in Nigeria. The record contains no independent information in support of this contention, either.

Based on the evidence of record, the AAO is unable to conclude that, in view of her health problems, the applicant's wife would suffer extreme hardship in the applicant's absence. It also cannot be concluded that the applicant's wife would not be able to obtain medical care in Nigeria.

In her affidavit on appeal, the applicant's wife writes of the applicant's positive relationship with her children. She indicates that they would greatly miss the applicant if he is removed from the United States. In fact, one of her daughters also wrote a letter on appeal stating that she loves the applicant very much. The AAO does not doubt that the applicant's stepchildren have grown attached to him; however, there is no indication in the evidence that they would undergo greater than usual distress upon his removal.

The applicant's wife states on appeal that she believes she and the applicant will be unable to obtain employment in Nigeria, which will cause her to suffer extreme financial hardship. The record does not indicate that the applicant's wife would be unable to make household adjustments to accommodate the applicant's departure from the United States. There also is no evidence that the applicant or his wife would have no employment opportunities in Nigeria. As financial changes and challenges often accompany the removal of a spouse, the applicant's wife's circumstances cannot be considered extreme.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse and stepchildren 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.