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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LONDON, UNITED KINGDOM Date:

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 Officer-in-Charge (OIC), London, United Kingdom, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

The applicant, [redacted], a native and citizen of Nigeria, and resident of the United Kingdom, was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i), for having committed a crime involving moral turpitude. The applicant is the spouse of [redacted] a lawful permanent resident, and the father of four lawful permanent resident children. The applicant sought a waiver of inadmissibility under section 212(h) of the Act, which the OIC denied, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the OIC, dated November 3, 2005.*

The AAO will first address the finding of inadmissibility.

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

> (A)(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.

"[M]oral turpitude refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general." *Padilla v. Gonzales*, 397 F.3d 1016, 1019-21 (7th Cir. 2005), (quoting *In re Ajami*, 22 I. & N. Dec. 949, 950 (BIA 1999)).

The record reflects that in 2004, the applicant was charged with and found guilty of furnishing false information contrary to section 17(a)(b) of the Theft Act 1968. The applicant was sentenced to a community punishment order of 150 hours concurrent for each of five counts; and was required to pay a fine, costs, and a confiscation order; or in default, serve eight months imprisonment. Based on the evidence in the record, the applicant is inadmissible under section 212(a)(2) of the Act.

The AAO will now address the finding that a waiver of inadmissibility is not warranted.

Section 212(h) of the Act provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . .
>
> (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 [Secretary] 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 . . .

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The record indicates that [redacted] qualifying relatives are his wife and children. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the qualifying relative must be established in the event that the qualifying relative joins the applicant; and in the alternative, that the qualifying relative remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record fails to establish that the applicant's wife or children would endure extreme hardship if they remained in the United States without him.

Counsel claims that the applicant's wife has been supporting her husband in England and her household in the United States, which has depleted the family's savings. The AAO finds that there is no evidence in the record substantiating that the [redacted] family is in financial straits. The record indicates that [redacted] owns six investment properties in the United States and the house where she and her children reside. It shows that she earns a basic salary in excess of $115,000 per year and has an annual bonus target of 20% of her salary.

Letter from counsel, dated September 20, 2005; mortagage statements; letter from sanofi aventis, dated September 12, 2005. The AAO cannot determine whether her income is insufficient to meet household expenses in the United States as no documentation has been submitted of her household expenses. Although counsel claims that [redacted] financially supports her husband, there is no documentation of this in the record. 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)).

The record contains a psychological evaluation performed by [redacted] In the evaluation, [redacted] states that [redacted] experiences stress on account of separation from her husband, her numerous duties, and her family's financial problems. He states that the family may be required to move for financial reasons, which would disrupt the children and sever church, friends, and social connections. He states that separation from the applicant has been significant for [redacted], who has had other personal losses. Dr. [redacted] states that [redacted] suffered the most from separation from her father, functioning below academic potential and experiencing mild depression and emotional withdrawal. He states that although she does not meet the depression criteria, continued separation from the applicant may cause diagnosable depression. Mr. [redacted] states that [redacted]s anxiety is manifested by bedwetting. He states that in the event that the [redacted] move to England, the family will lose connections with their church and social support. [redacted] states, would either remain in the United States to finish college, losing the availability of her family, or would "disrupt her college and change to a different program."

Although the input of any mental health professional is respected and valuable, the AAO notes that Mr. [redacted] evaluation is based on a single interview with [redacted] and her children, on projective drawings and standardized questionnaires, and on a document from [redacted] The record fails to reflect an ongoing relationship between a mental health professional and [redacted] and/or her children or any history of treatment for the anxiety experienced by [redacted] and her children. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, projective drawings, standardized questionnaires, and a document from [redacted], do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [redacted] findings speculative and diminishing the assessment's value to a determination of extreme hardship.

Courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld

the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS,* 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt.

The record reflects that [redacted] and her children are very concerned about separation from the applicant. Ms. Sonaike and her children have resided in the United States since September 2000. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of [redacted] and her children, if they remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship, which certainly will be endured by the applicant's family, is unusual or beyond that which is normally to be expected upon deportation or exclusion. *See Hassan, Shooshtary, Perez,* and *Sullivan, supra.*

The record is insufficient to establish that [redacted] and her children would endure extreme hardship if they joined the applicant in Great Britian.

The conditions in England, the country where the [redacted] would live if they join the applicant, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige,* 20 I&N Dec. 880 (BIA 1994)(citations omitted).

Counsel claims that in England [redacted] would not be able to find a comparable position to the one she presently holds in the United States. The letter from [redacted] the Associate Director – Head Global Business Performance/Corporate Regulatory Affairs with sanofi aventis, conveys that research and development in the pharmaceutical industry in England is shrinking due to legislative restrictions and taxation, and that [redacted] would not be able to find an equivalent position to the one she has.

The AAO finds the assertions by counsel and [redacted] unpersuasive in establishing extreme hardship to either [redacted]e or her children. In *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA determined that the claim of difficulty in finding employment and inability to find employment in one's trade or profession, although a relevant factor, is not sufficient to justify a grant of relief in the absence of other substantial equities. *Id.* at 631. In *Marquez-Medina v. INS,* 765 F.2d 673, 676 (7th Cir. 1985), the court held that the loss on sale of a home and loss of present employment and its benefits did not constitute extreme hardship, but were normal occurrences of deportation. In addition, the applicant has not established that he and/or Ms. [redacted] would be unable to obtain any employment in order to support their family. [redacted] was educated and worked in England for many years prior to her departure for the United States. Though she may not find an exact match for her current job, her advanced degrees would presumably qualify her for some sort of employment.

Although counsel refers to *In Re Kao-Lin,* 23 I & N Dec. 45 (BIA 2001), to establish extreme hardship to the [redacted] children, the AAO finds the facts in that case are dissimilar from those presented here. In *In Re Kao-Lin,* the BIA found that the oldest U.S citizen daughter did not have a basic command of the Chinese language so as to transition to life in Taiwan and that she would experience extreme hardship if uprooted at that stage in her education and social development and required to survive in a Chinese-only environment.

Here, the record reflects that the oldest [redacted] aughters are accustomed to life in England as they were thirteen and nine years of age when they arrived in the United States. The [redacted] children do not need to learn a foreign language to survive in England, unlike the children in *In Re Kao-Lin.* Thus, the [redacted] children should be able to transition to life and school in England. The record reflects that [redacted]'s parents, brothers, and husband live in England; this will help ease the transition of living there.

In *Matter of Piltch, supra,* the BIA found that the difficulties that a child may face adjusting to life in his parent's homeland do not materially differ from those encountered by other children who relocate with their parents, especially at a young age. (citation omitted) The BIA also stated that economic and educational opportunities which are better for the child in the United States than in the alien's homeland does not establish extreme hardship. (citations omitted)

No information has been presented to show that the economic and educational opportunities for the [redacted] children are better in the United States than in England.

With regard to the active community involvement of [redacted] and her children in the United States, in *Villena v. INS,* 622 F.2d 1352, 1357 (9th Cir. 1980) the court stated that "separation from a community of people that one has come to identify with and become involved in" alone would not establish extreme hardship, but should be weighed with other factors supporting the claim.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.