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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: BALTIMORE Date: SEP 02 2009

IN RE: [redacted]

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, 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 section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for having made a false claim to U.S. citizenship. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and children in the United States.

The district director concluded that the applicant was ineligible for a waiver due to his false claim to U.S. citizenship and denied the application accordingly. *Decision of the District Director*, dated May 18, 2007.

On appeal, counsel contends the applicant is eligible for consideration of a waiver under section 212(i) of the Act because the applicant's false claim to U.S. citizenship was made prior to September 30, 1996, the date of the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA").

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [redacted], indicating they married on October 19, 1993; copies of the birth certificates of the couple's three U.S. citizen sons; a copy of [redacted] naturalization certificate; a letter from the couple's physician; a letter from a psychiatrist; an affidavit from the applicant; an affidavit and three letters from [redacted]; a copy of the applicant's curriculum vitae; numerous articles addressing the importance of responsible fathers; background materials addressing conditions in Nigeria; a letter from [redacted] employer; tax and other financial documents; numerous letters of support; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides:

> (ii) Falsely claiming citizenship
>
> (I) In general
> Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this chapter (including section 274A) or any other Federal or State law is inadmissible.

In this case, the district director found, and counsel concedes, that the applicant purchased a false birth certificate in March 1982 and used it to apply for a U.S. passport in 1982. The applicant is, therefore, inadmissible under section 212(a)(6)(C)(ii)(I) of the Act.

The AAO concurs with counsel that the district director erred in finding the applicant ineligible for consideration of a waiver under section 212(i) of the Act. Although aliens making false claims to U.S. citizenship on or after September 30, 1996, are ineligible to apply for a Form I-601 waiver, aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, are eligible to apply for a waiver.

> In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3. In this case, the applicant's claim to false citizenship was made prior to September 30, 1996, and, therefore, he is eligible to apply for a waiver under section 212(i) of the Act.

Section 212(i) of the Act provides:

> (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien. . . .

A section 212(i) waiver of the bar to admission 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. *See* Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). 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 deems relevant in determining whether an alien has established extreme hardship under 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.

In this case, the applicant's wife, [redacted] states that if her husband's waiver application were denied, she could not move to Nigeria because she has permanent employment as a nurse and has an annual salary of $65,000. [redacted] contends she would not be able to find employment in Nigeria and that, in any event, she does not want to live in Nigeria as she has lived most of her life in the United States. [redacted] states it would be "extremely hard, if not impossible," for her to adjust to life in Nigeria. [redacted] states her children are "totally alien to the life and culture in Nigeria." She states the Anambra State in Nigeria is "in serious political crisis with rampant killings, criminal and rogues operating with license and making life miserable, bad and dangerous roads, and high unemployment." [redacted] states that the situation is "explosive" and that the public fears a military coup. She contends that if her husband's waiver application were denied, she would suffer extreme financial hardship because she would be forced to support two separate households – one in the United States and the other in Nigeria. Moreover, [redacted] contends that she is "fearful that [her] ex-husband [who lives in Nigeria] remains angry at [her] for choosing to [re-]marry." She states that she left Nigeria in the early 1980's with her ex-husband and that it was a very difficult time for her "after the sudden and painful death of [her] two male children." [redacted] describes her ex-husband as "vicious and vindictive" and states that her ex-husband's family has "campaigned against [her]," circulating an anonymous letter against the applicant and [redacted]. In addition, Ms. [redacted] claims her son, [redacted], is asthmatic and allergic to pollen, dust, grass and pollution, that he is on daily medication, and was treated for pneumonia in the last two years. She further claims her children, [redacted] and [redacted] have "special needs." According to [redacted], "[t]he initial test and diagnosis for [redacted] showed that he will have the Down Syndrome and [she] had the choice of aborting him. . . . [T]hank God that he is still alive and well." [redacted] "was supposed to be a girl but turned out a boy with some minor female features" for which he is still under close observation by his primary care physician and was recently sent to some experts for further study and diagnoses. Furthermore, [redacted] states that her husband takes the kids to and from school, helps them with homework, oversees their extracurricular activities, cooks, cleans, does the grocery shopping, and mows the lawn. [redacted] states that without her husband, she would not be able to function and excel, and that she needs him for her personal growth and professional development. *Affidavit of* [redacted], dated May 2004; *Letters from* [redacted], dated June 13, 2007, January 12, 2005, and December 13, 2004.

The applicant states that [redacted] has lived in the United States for most of her adult life and "has resolutely refused to go back to Nigeria to suffer the very ignominies she previously escaped from." The applicant contends that if his waiver application were denied, he would "have no choice but to depart to Nigeria with [their] three US citizen children, as [he] is the only babysitter and caretaker they have ever known." According to the applicant, his wife has a very busy schedule as a registered nurse, making it difficult for her to take care of the children. The applicant claims his

children do not speak any Nigerian language and are "completely foreign to Nigerian social life and cultural norms." The applicant states that if he and his family had to move to Nigeria, it would be "impossible" to support his family and maintain the standard of living to which his wife and children are accustomed. He further states that if his wife remained in the United States without the children, her income would be insufficient to maintain a household in the United States as well as in Nigeria. In addition, the applicant contends his wife intends on becoming a physician and that her aspirations would be destroyed if his waiver application were denied. Furthermore, the applicant contends his children's education would be "seriously endangered, if not completely destroyed" if they moved to Nigeria. According to the applicant, he is the parent who has been the children's primary caretaker their entire lives while his wife has been the "sole breadwinner of the family." Moreover, the applicant states that "two of [his] children have 'special needs' and would have [a] hard time adjusting and staying in this country without [him.]" The applicant states that his son, [redacted] "ha[s] medical conditions that require consistent medical attention and treatment," and that his son, [redacted], is "educationally challenged [and] needs special assistance for day-to-day living." Finally, the applicant contends that although he has "friends and people from Anambra State of Nigeria," they would not be able to financially assist him if he returned to Nigeria. *Letter from* dated January 11, 2005; *Affidavit of* [redacted], dated December 16, 2004.

A letter from the applicant's and [redacted] primary care physician states that the applicant has "developed some life-threatening medical conditions that require close medical observation, attention and if it is needed, aggressive treatment." The doctor further states that the applicant takes medication for high cholesterol and another medication "for heart related symptoms." According to the applicant's doctor, "hopefully [the applicant's health] will stabilize if he continues with his prescribed medication and follow-up with the appropriate activities." However, the doctor concludes, "[b]reaking [the family] apart now will obviously have a tremendous psychological and medical implication for the family. . . . If he leaves under this precarious medical condition, . . . he will easily die. . . ." *Letter from* [redacted], dated June 14, 2007.

A letter from a psychiatrist states that according to [redacted]'s primary care physician, [redacted] was diagnosed with hyperthyroidism in 2006 and is currently receiving "Propylthiouracil (PTU)." The psychiatrist states that the symptoms of hyperthyroidism include "fatigue, irritability, anxiety, depression, shortness of breath, insomnia, weight loss, vomiting, etc." According to the psychiatrist, was hospitalized "last year" due to her hyperthyroidism and stress can exacerbate her condition. *Letter from* [redacted], dated June 10, 2007.

After a careful review of the record evidence, there is insufficient evidence showing that the applicant's wife would suffer extreme hardship as a result of the applicant's waiver application being denied.

The AAO finds that if had to move to Nigeria to be with her husband, she would suffer extreme hardship. The record contains ample evidence that the political situation in Nigeria is precarious. *See, e.g., Searching For Peace in Nigeria*, dated August 19, 2004; [redacted], dated December 12, 2004; [redacted] *Do You Wish A*

Coup? dated December 13, 2004. In addition, the record includes an anonymous letter addressed to the "Ladies and Gentlemen of Anambra State," declaring that [redacted] "is a dark-hearted woman who ABANDONED HER FAMILY (4 CHILDREN AND HER HUSBAND) IN NIGERIA for no justifiable reason. . . . [T]his woman has a live-in boyfriend who she claims as a second husband, and also had 3 more children by this man." The record further contains a statement from the Anambra State Association condemning the anonymous letter as "utterly cowardly[,] in very poor taste[, and] libelous." *Communique from Anambra State (Nigeria) Association in the Americas, Inc.*, undated. Furthermore, [redacted] would need to readjust to a life in Nigeria after having lived in the United States for more than twenty years, a difficult situation particularly considering she has three U.S. citizen minor children who are not accustomed to living in Nigeria and do not speak the language there. Furthermore, she would have to give up her job as a registered nurse and may not be able to find employment in Nigeria. The record therefore shows that if [redacted] were to return to Nigeria, she would experience hardship above and beyond what would normally be associated with deportation.

Nonetheless, [redacted] has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. Although the record contains ample evidence attesting to the applicant's good character and the benefits of having a responsible father involved in their children's lives, there is no evidence the hardship [redacted] would experience is any greater than those hardships ordinarily associated with deportation. To the extent the psychiatrist stated that [redacted] has hyperthyroidism, *Letter from* [redacted] *supra,* significantly, although [redacted] submitted three letters and an affidavit totaling over fifty pages, mostly single-spaced, she utterly fails to mention her hyperthyroidism. In addition, the psychiatrist specifically states that [redacted] was diagnosed with hyperthyroidism "as per her primary care physician;" however, the record contains a letter from [redacted] primary care physician who also fails to mention [redacted] purported hyperthyroidism. *Letter from* [redacted] *supra.* Similarly, although [redacted] states that her son, [redacted], has asthma and requires daily medications, and that [redacted] is educationally challenged and requires special assistance, there is no letter from any health care professional substantiating these claims. As such, there is no evidence addressing the prognosis or severity of [redacted] or her children's health conditions. There is no evidence addressing whether these conditions are temporary or permanent, no explanation or elaboration addressing how these health conditions affect their daily lives, and no indication that they require the applicant's assistance for these conditions. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical condition or the treatment and assistance needed.

Regarding the applicant's and [redacted] claim that [redacted] would be unable to financially support a household in the United States as well as in Nigeria, there is nothing in the record to suggest that the applicant cannot obtain employment in Nigeria. The AAO notes that the applicant is well educated, holding a doctoral degree as well as three Master's degrees. Although the applicant and his wife may not be able to maintain the same standard of living to which they are accustomed, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a

finding of extreme hardship. *See also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

It is evident from the record [redacted] has an extensive support network consisting of her friends, co-workers, and her church. While the AAO recognizes the challenges of single parenthood (and, alternatively, of being separated from her children), [redacted] hardship does not rise to the level of extreme hardship based on the record. If [redacted] and her children remain in the United States, their situation is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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 wife 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 section 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.

ORDER: The appeal is dismissed.