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U.S. Citizenship and Immigration Services

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H4

[redacted]

FILE: [redacted] Office: ST. PAUL, MINNESOTA Date: MAR 03 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF PETITIONER:

[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).

Elena C. Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, St. Paul, Minnesota, 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 has resided in the United States since June 4, 1999, when he entered as a visitor for pleasure with authorization to remain until December 3, 1999. He departed the United States in March 2005 and traveled to Nigeria and returned on April 29, 2005 with an advance parole document. He was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to remain in the United States with his wife.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of District Director* dated July 7, 2006.

On appeal, counsel for the applicant asserts that the applicant's wife would experience extreme hardship if the applicant were removed from the United States because she suffers from various medical conditions, including endometriosis and high blood pressure, and would be unable support herself and her family financially without the applicant's income. *See Brief in Support of Appeal* at 1-2. Counsel further states that the applicant's wife would suffer extreme hardship if she relocated to Nigeria because she would lose her employment in the United States. *See Form I-290B, Notice of Appeal to the AAO.* In support of the appeal counsel submitted a letter from the applicant's wife's physical therapist, medical records for the applicant's wife, medical records for the applicant's stepdaughter, medical records for the applicant, affidavits from the applicant and his wife, letters from the applicant's mother-in-law and stepchildren, letters from the applicant's church, and a letter from the Minneapolis Police Department in support of the applicant. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who –
>
> > (II) Has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
> >
> > . . . .
>
> (v) Waiver. – The Attorney General [now Secretary, Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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 additionally 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the court 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. In *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, 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.

In the present case, the record reflects that the applicant is a forty-nine year-old native and citizen of Nigeria who has resided in the United States since June 4, 1999, when he entered as a B2 visitor with permission to remain until December 3, 1999. The applicant remained in the United States after that date and filed an Application for Adjustment of Status (Form I-485) on October 18, 2001. The applicant subsequently returned to Nigeria and then reentered with an advance parole document on April 29, 2005. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States from to December 3, 1999 to October 18, 2001, when he filed his application for adjustment of status. The applicant currently resides in Minneapolis, Minnesota with his wife and stepchildren.

Counsel for the applicant states that the applicant's wife would suffer extreme hardship if the applicant were removed from the United States because she suffers from various medical conditions. In support of this assertion, counsel submitted medical records for the applicant's wife, including a letter from a physical therapist stating that she received physical therapy for "debilitating cervical and lumbar pain" from September to December 2004. *See Letter from* dated September 7, 2006. Counsel also submitted records from a hospital where the applicant's wife was admitted due to pelvic and abdominal pain on August 2, 2006. *See* [redacted] *Patient's Discharge Instructions,* dated August 6, 2006. The records indicate that the

applicant's wife had previously been hospitalized with similar pain and state that she should be able to return to work one or two days after her August 6, 2006 discharge from the hospital. *See Hennepin County Medical Center, Narrative Notes,* [redacted] dated August 6, 2006. These records further state, "The workup was extensive but essentially undiagnostic. Our current working diagnosis is that she may have 'Endometriosis'. To that effect she has been referred to OB/GYN for further workup." *Id.* Counsel also submitted records from Resurrection Medical Center in Chicago, Illinois, where the applicant's wife was treated for vomiting, diarrhea and other symptoms while traveling in May 2006. The records indicate that the applicant underwent numerous diagnostic tests, including endoscopy, which resulted in a diagnosis of Non-ulcer Dyspepsia. *See Resurrection Medical Center, Endoscopy Procedure Record,* dated May 5, 2006.

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record does not establish, however, that the applicant's wife's condition is so serious that she would suffer extreme hardship if she remained in the United States without the applicant or were to relocate to Nigeria. The record contains a brief letter from a physical therapist stating she underwent therapy for severe pain in 2004, but there is no indication that she is still suffering from this condition. The record also contains documentation relating to two hospitalizations in 2006 for dyspepsia and possible endometriosis. The documents include test results, physician's notes, many of which are illegible, and statements that the applicant was referred to a gynecologist for further tests. The record does not contain any information about any follow-up treatment or specific evidence concerning the current medical condition of the applicant's wife, such as a detailed letter in plain language from her physician explaining the nature and long-term prognosis of her condition and any treatment and medication needed. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed. Further, counsel did not submit any information on the availability of medial care in Nigeria to support a claim that the applicant's wife would not have access to adequate care there.

Counsel also asserts that the applicant's wife would suffer hardship as a result of her daughter's medical condition. Although the emotional effects of a serious medical condition of a qualifying relative's child or other close relative could be considered in assessing a claim of extreme hardship, the evidence in the present case does not establish that the applicant's stepdaughter is suffering from such a condition. In support of the assertions concerning the medical condition of the applicant's stepdaughter, counsel submitted a letter stating that she has a colposcopic examination after an irregular Pap smear. The letter further states that it was expected her Pap smears would return to normal and that in the future she would be able to return to yearly screening. Nothing on the record indicates that the applicant's stepdaughter suffers from a serious medical condition that would cause the applicant's wife to suffer extreme hardship if the applicant were removed to Nigeria.

Counsel asserts that if the applicant is removed from the United States, his wife would suffer financial hardship. The applicant's wife states in her affidavit, "I do not want the responsibility alone of maintaining our mortgage, utilities, insurance policies, health care, and school fees." *Affidavit of* [redacted] dated March 26, 2006. The record contains copies of income tax returns submitted with an affidavit of support in 2004 indicating that the applicant's wife reported an

income of $14,331 in 2003 while the applicant reported only about $200 in wages. In 2002 the applicant's wife earned $22,000. No further documentation was submitted with the waiver application or appeal concerning the income, expenses, or overall financial situation of the applicant and his wife. 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)). Further, there is no indication that there are any ongoing unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of separation from the applicant. Any financial impact of the loss of the applicant's income therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's wife. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

In her affidavit the applicant's wife states that she loves her husband and her children love their stepfather, and she asks, "How are we supposed to cope with him being forced out of our lives?" *Affidavit of* [redacted] dated March 26, 2006. Letters from the applicant's adult stepchildren and mother-in-law also state that the applicant and his wife have a close relationship and he has been a father to his wife's three children. No additional evidence was submitted concerning the potential emotional or psychological effects of the applicant's removal on his wife. The evidence does not establish that any emotional harm the applicant's wife is experiencing is more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's deportation or exclusion. Although the depth of her concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. A waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

The emotional and financial hardship the applicant's wife would experience if he is denied admission to the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship). The applicant submitted no evidence and made no claim that his wife would experience extreme hardship if she were to relocate with him to Nigeria. Therefore, the AAO cannot make a determination of whether the applicant's wife would suffer extreme hardship if she moved to Nigeria.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or

inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

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. 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.