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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: MOSCOW, RUSSIA Date: AUG 13 2010

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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).

Thank you,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Moscow, Russia, 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)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. 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 in the United States.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated January 26, 2008.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [redacted] indicating they were married on November 19, 2003, in Nigeria; an affidavit from [redacted] an affidavit from the applicant; a copy of the 2006 U.S. Department of State Country Reports on Human Rights Practices for Nigeria; tax and other financial documents; letters from [redacted] employers; and 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)(i) of the Act provides:

> In general.—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) 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. . . .

The field office director found, and the applicant admits, that he had previously used a completely different name, [redacted] and date of birth on a prior visa application. *Affidavit of* [redacted], dated May 31, 2006. Therefore, the applicant is inadmissible

under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C)(i) 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. *See* Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). An applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, as well as should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). 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, 565-66 (BIA 1999), provides a list of factors the Board of Immigration Appeals (BIA) 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 her marriage to the applicant is in good faith. She contends she has lived in the United States for over seventeen years and that she has built her entire life in the United States in anticipation that her husband will join her. [redacted] states she has been trying to have and raise children, but that the distance between her and her husband undermines her ability to get pregnant. In addition, [redacted] states she has a career in nursing in the United States and that her husband relies on her financial support. Furthermore, she states that her frequent trips to Nigeria are a financial burden that has also been detrimental to her employment. She states that the economic, political, and social conditions in Nigeria pose a safety risk and are "a far cry" from the standards in the United States. *Affidavit of* [redacted] dated June 21, 2006.

After a careful review of the record, 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 [redacted] had to move to Nigeria to be with her husband, she would experience extreme hardship. The record shows that [redacted] has lived in the United States for

twenty years. She would need to readjust to a life in Nigeria, a difficult situation particularly considering the U.S. Department of State recently revised its Travel Warning urging U.S. citizens against travel to Nigeria. The Travel Warning states, in pertinent part:

> Violent crime committed by individuals and gangs, as well as by some persons wearing police and military uniforms, is an ongoing problem throughout the country, especially at night. Visitors and resident U.S. citizens have experienced armed muggings, assaults, burglary, carjacking, rape, kidnappings, and extortion - often involving violence. Home invasions remain a serious threat, with armed robbers accessing even guarded compounds by scaling perimeter walls; following, or tailgating, residents or visitors arriving by car into the compound; subduing guards and gaining entry into homes or apartments. Armed robbers in Lagos [where the applicant lives] also access waterfront compounds by boat. U.S. citizens, as well as Nigerians and other expatriates, have been victims of armed robbery at banks and grocery stores and on airport roads during both daylight and evening hours. Law enforcement authorities usually respond slowly or not at all, and provide little or no investigative support to victims.

U.S. Department of State, Travel Warning, Nigeria, dated May 24, 2010

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. If [redacted] decides to remain in the United States, their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. Federal courts and the BIA have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch, supra,* 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).

Regarding [redacted] financial hardship claim, the AAO notes that [redacted] submitted a Form I-864, affirming she would financially support the applicant based on her salary alone of $65,522. *Affidavit of Support under Section 213A of the Act (Form I-864),* dated June 23, 2005. In addition, although the record contains copies of [redacted] phone bills, receipts for airline tickets to Nigeria, and copies of Western Union receipts showing [redacted] wired money to the applicant, there is insufficient evidence showing that [redacted] hardship is extreme. The record does not indicate [redacted] regular monthly expenses, such as rent or mortgage. Without more detailed information, the AAO is not in the position to attribute any financial difficulties [redacted] may

experience to the applicant's departure. In any event, the mere showing of economic harm to qualifying family members is insufficient to warrant a finding of extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *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).

To the extent [redacted] contends she wants to have children and that she has experienced a "tremendous psychological and emotional impact" being separated from her husband, there is no evidence suggesting that the hardship she would suffer is unusual or beyond that which would normally be expected under the circumstances. *See Perez, supra.*

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.