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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: BALTIMORE, MARYLAND

Date: AUG 19 2005

IN RE: [REDACTED]

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

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. The Administrative Appeals Office (AAO) affirmed the district director's decision on appeal. The application is again before the AAO on Motion to Reopen. The motion will be granted, and the AAO's and district director's decisions will be affirmed. The application will be denied.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States under § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured entry into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his family.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on the applicant's wife; therefore, on August 13, 2002 he denied the Application for Waiver of Grounds of Excludability (Form I-601). On May 21, 2003, the AAO dismissed the appeal. On motion, counsel contends that the applicant's wife's pregnancy constitutes a new fact that would add to the hardship she would experience in the event of the applicant's removal. Counsel asserts that the applicant's wife would suffer in the extreme should the applicant be removed from the United States.

On motion, counsel submits a psychological evaluation, a physician's statement, affidavits by the applicant and his wife, letters from the applicant's employer, friends, and relatives, and work performance certificates. The motion to reopen is granted in order to review the entire record in light of the applicant's wife's pregnancy, since this constitutes a new, potentially material fact.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) 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.

The record reflects that the applicant used his brother's passport and U.S. visa to enter the United States on June 30, 1999. He is therefore inadmissible under the above provision of law.

Section 212(i) of the Act provides that:

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

A § 212(i) waiver of the bar to admission resulting from violation of § 212(a)(6)(C) 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. Hardship the alien himself experiences upon deportation is irrelevant to § 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's wife. 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 (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of 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.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of relocating with the applicant to Nigeria, because her family lives in the United States, and she is unemployed and relies on the applicant's income. According to information provided on motion, the applicant's spouse was due to give birth on July 7, 2003; hence, it is presumed that she is no longer pregnant. On motion, counsel presents no new evidence in support of the contention that having a baby would increase the applicant's wife's hardship in Nigeria, to the extent that it could be considered extreme.

The record also fails to establish that the applicant's spouse would experience extreme hardship if she remains in the United States. The record does not contain any information with respect to the applicant's wife's ability to obtain employment subsequent to the baby's birth, nor does the record establish that the applicant would be unable to contribute to his family's finances from a location outside the United States. In addition there is no evidence on the record that the applicant is the sole source of financial assistance available to his spouse. Information in the record notes that the applicant, his wife and his wife's mother were all involved in automobile accidents. However, the record contains no documentation regarding the accidents or information on why this would limit their ability to work or the wife's mother's ability to assist her daughter once the baby is born. Hence, the AAO cannot conclude that the applicant's wife would suffer extreme financial hardship as a result of the applicant's inadmissibility. It is noted that 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.

Counsel asserts that the applicant's spouse will suffer extreme psychological distress as a result of separation from the applicant. On motion, counsel submits an addendum to the previously submitted psychological evaluation. The addendum was based on the applicant's and his wife's meeting with psychologist [REDACTED] on June 4, 2003. [REDACTED] wrote that the applicant's wife was suffering from depression due to her worrying about the applicant's immigration problems. [REDACTED] noted that since the time of the initial evaluation on May 29, 2002, because of cultural taboos, the applicant's wife had not sought psychological or psychiatric therapy. [REDACTED] expressed the opinion that the applicant's wife's emotional state would worsen if the applicant were removed from the United States. [REDACTED] stated that she recommended mental health practitioners to the applicant and his wife to help them deal with the stressful situation.

Counsel also submits a letter dated June 26, 2003, by Ghislaine Fougy, M.D., a psychiatrist who examined the applicant's wife at the request of Dr. Kern. Dr. Fougy reported that the applicant's wife was suffering from depression reactive with anxiety, and that she could become more depressed and risk having suicidal thoughts or post-traumatic stress disorder. Dr. Fougy indicated that she would follow-up with the applicant's wife, but she did not describe any specific therapeutic requirements or recommendations. The letters of Drs. Kern and Fougy do not describe future emotional suffering that can be considered extreme.

While the AAO recognizes that the applicant's wife will endure hardship due to a separation from the applicant, the applicant's wife's distress appears to be similar to that experienced by similarly situated spouses. The record does not establish that the applicant's wife's circumstances will give rise to extreme hardship. U.S. court decisions have repeatedly 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 § 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the decisions of the district director and AAO will be affirmed, and the application will be denied.

ORDER: The district director's and AAO's decisions are affirmed, and the application is denied.