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U.S. Citizenship
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Date: APR 25 2007

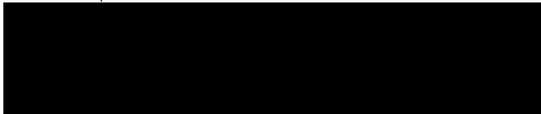
IN RE:



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:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of crimes involving moral turpitude. The record reflects that the applicant has a U.S. citizen spouse and child. The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. *Decision of the District Director*, dated September 1, 2006.

On appeal, counsel asserts that the district director failed to balance the equities involved and failed to acknowledge that the applicant's arrests occurred before his daughter's birth, and that there is the possibility that the applicant's daughter would be subject to female genital mutilation if the applicant's daughter and wife were to return to Nigeria with him. *Form I-290B*, received September 22, 2006.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement and the applicant's criminal record. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant was convicted of misdemeanor larceny pursuant to North Carolina Statute § 14.72 in relation to a November 15, 2001 arrest. In addition, the applicant was convicted of fraudulent use of personal information pursuant to Florida Statute § 817.568 on October 8, 2003.¹ As these are crimes involving moral turpitude, the applicant is inadmissible under section 212(a)(2)(A) of the Act.

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

(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.

¹ The record reflects that the applicant was arrested for numerous other offenses which were subsequently dismissed. The AAO notes that an arrest does not amount to a conviction under immigration law. The record does not include arrest or disposition information related to the applicant's arrest for marijuana possession on August 22, 2001. The AAO notes that theft under Florida Statute § 812.014 is only a crime involving moral turpitude when an applicant is convicted under the section of the statute which is related to a permanent taking. See *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973). The record of conviction is not clear as to which section of Florida Statute § 812.014 the applicant was convicted under. Lastly, resisting an officer without violence under Florida Statute § 843.02, for which the applicant was convicted, is not considered a crime involving moral turpitude.

- (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance... is inadmissible.

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

(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 -

(I) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -

- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

the alien has been rehabilitated; or

(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.

Section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

The AAO notes that an application that fails to comply with the technical requirements of the law may be denied by the AAO even if a district director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Based on a *de novo* review of the record, the AAO finds that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission (i.e. adjustment of status) to the United States by fraud or willful misrepresentation. In a sworn statement at his adjustment of status interview, the applicant stated that he had never been arrested. *Applicant's Sworn Statement*, dated May 18, 2006. As a result of this misrepresentation, the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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.

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.

As section 212(i) of the Act includes U.S. citizen spouses as qualifying relatives, but not U.S. citizen children, the AAO will only evaluate hardship to the applicant's spouse. As this is a more restrictive standard, it will be examined first. A finding of extreme hardship under section 212(i) of the Act would result in the same finding under section 212(h) of the Act and both waivers could be granted. If extreme hardship to his spouse is not found, no purpose would be served in examining extreme hardship to his daughter under section 212(h) of the Act as he would remain permanently inadmissible under section 212(i) of the Act.

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 lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to his spouse must be established in the event that she relocates to Nigeria or in the event that she remains in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event of relocation to Nigeria. Counsel states that there is no law in Nigeria that bans female genital mutilation and he details the medical issues related to the practice. *Brief in Support of Appeal*, at 2-3, dated October 20, 2006. The AAO notes that while general statements regarding female genital mutilation in Nigeria were submitted, there is no evidence that the applicant's spouse would be subject to this practice. The record does not address any other hardship factors related to the applicant's spouse relocating to Nigeria. As such, the record does not evidence extreme hardship to a qualifying relative upon relocation to Nigeria.

The second part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she remains in the United States. Counsel states that the applicant's spouse completely depends on the applicant emotionally and financially, she did not finish high school and does not possess skills with which she could support herself. *Id.* at 1. Counsel states that without a support system, both the applicant's spouse and daughter's lives are doomed and any prospects of leading a good life will decrease exponentially without the applicant. *Id.* The applicant's spouse states that she and her daughter need the applicant and that they could not make it without him. *Letter from the Applicant's Spouse*, dated July 21, 2006. The AAO notes that separation as a result of removal commonly creates emotional stress and financial and logistical problems. The record does not distinguish the hardships facing the applicant's spouse from those confronting other individuals who have been separated from family members by removal. In addition, the record does not include substantiating evidence of emotional or financial hardship, other than the applicant's spouse's letter. The AAO notes that the applicant's 2005 tax return, filed jointly with his spouse, indicates that she was self employed as a cosmetician. This would appear to contradict the assertion that she is without skills to support herself. The same tax return does not indicate that the applicant earned any income. This weakens the assertion that his spouse is financially dependent on the applicant. A review of the record does not evidence extreme hardship to a qualifying relative upon relocation to Nigeria.

U.S. court decisions have 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. Moreover, the U.S. Supreme Court additionally 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.

Having found the applicant statutorily ineligible for relief, no purpose would be served in an additional discussion of whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) 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.