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U.S. Citizenship
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DEC 04 2007

FILE:

Office: LOS ANGELES, CA

Date:

IN RE:

Applicant:

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:

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Nigeria who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C). The applicant is married to [REDACTED], who is a naturalized citizen of the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director denied, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the Interim District Director, dated November 16, 2004.* The applicant submitted a timely appeal.

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 was issued a B1/B2 visa by the U.S State Department on June 22, 1998. The annotation in the visa states that the applicant was sponsored by “UNDP for a one month course NYC / married with child.” The Form I-485, Application to Register Permanent Residence or Adjust Status, indicates that the applicant did not have a child and was not married at the time the visa was issued and that the applicant’s child was born on May 18, 1999. The record therefore shows that by willful misrepresenting a material fact - that she was unmarried and did not have a child – the applicant procured a visa and admission into the United States.¹ Based on the record, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO will now address whether a waiver of inadmissibility is warranted.

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

¹ The AAO notes that there appears to be an unresolved issue regarding the number of prior marriages the applicant and her spouse had. Their marriage license indicates that the applicant’s spouse had two prior marriages and the applicant one. The I-130 petition for alien relative filed on behalf of the applicant and its supporting documentation indicate no prior marriages for the applicant and only one for her spouse. On June 26, 2003 the applicant was informed of this discrepancy and asked to provide an adjusted marriage license if the information was incorrect. There is no indication that the issue was resolved. If there were, in fact, other marriages, this would constitute additional misrepresentation.

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.

The applicant seeks a waiver of inadmissibility. A section 212(i) waiver of the bar to admission resulting from violation of section 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 to the applicant and her children is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and her children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's spouse. 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).

The record contains, in addition to other documents, an affidavit, income tax records, photographs, a psychological evaluation, divorce records, birth certificates, and a marriage certificate.

The affidavit dated December 12, 2001 by [REDACTED] indicates that he and his wife have two U.S. citizen children and that they do not want to raise their children in Nigeria as it is an unsafe country. He states that he will not accompany his wife there, but will experience emotional hardship and mental anguish knowing that crime and violence in Nigeria place his family in danger. He states that Nigeria has a soaring crime rate, corruption, and ethnic and religious strife, caused by appalling social and economic conditions. [REDACTED] indicates that 60 percent of the 120 million people in Nigeria live in rural areas where roads are in poor condition, there is one telephone line for every 100 persons, and power outages are common; he states that 60 percent of the population lives in poverty. [REDACTED] states that he owns Anchor Medical Supply Company and manages, sells, and markets medical supplies and that he would not find comparable or gainful employment to support his family in Nigeria. He states that Nigeria's per capita gross domestic product is in the lowest third of sub-Saharan countries. [REDACTED] states that Nigeria, is remote and airfare is exorbitant, and that telephone calls are expensive and he therefore will rarely visit or telephone his wife and children. He states that depriving the children of their father would cause him great sorrow.

The psychological evaluation dated December 15, 2004 by [REDACTED] a licensed psychologist, conveys that [REDACTED] has Type II diabetes and is insulin dependent, and has high blood pressure and anemia. She states that [REDACTED] indicates that his wife is a wonderful mother and that she takes care of their household and three children, who are five and three years old and the youngest is four months old. [REDACTED] states that the Umoh family would be torn apart if the applicant's waiver is not granted as [REDACTED] would stay in the United States without his children. She states that [REDACTED] indicates that his life would be in danger in Nigeria for medical, financial, and safety reasons. She states that [REDACTED] states that his life would be in danger from his half siblings who are fighting over their father's tribal lands and property. She conveys that in Nigeria [REDACTED] could not receive proper medical treatment and care for his chronic diabetes and that he would have extreme difficulty supporting himself and his family. [REDACTED] states that [REDACTED]'s diabetes would be severely affected by the separation from his wife and children and that he would be at risk of developing depression and resuming drinking again. She states that in Nigeria the children would be deprived of freedom and receiving an adequate education and would be exposed to life threatening diseases and would not receive proper medical care. She states that they would be ridiculed as having connections to

the United States and would be at risk of kidnapping. [REDACTED] conveys that unemployment is high in Nigeria and the children would not be prepared to return to the United States given the poor education they will receive. She states that the two girls would be pressured culturally to marry at a young age and would be at risk of sexual assault. She states that the trauma of separation from their father and the stress on their mother would have severe consequences on the children's emotional well-being and future psychosocial development.

The AAO has carefully considered all of the evidence in the record of proceeding in rendering this decision.

Extreme hardship to the qualifying relative must be established in the event that he joins the applicant; and in the alternative, that he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

The record fails to establish that the applicant's husband would experience extreme hardship if he remained in the United States without his wife.

With regard to the psychological evaluation by [REDACTED] although the input of a mental health professional is respected and valuable, the AAO notes that the submitted evaluation of [REDACTED] is based on a single interview between [REDACTED] and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and [REDACTED] and any treatment for depression or alcoholism. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, does not reflect the insight and elaboration commensurate with an established relationship with [REDACTED] thereby rendering [REDACTED]' findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

U.S. courts have stated that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted).

However, U.S. courts have held that the fact that an alien has a U.S. citizen child is not sufficient, in itself, to establish extreme hardship. As stated in *Matter of Correa*, 19 I&N Dec. 130, 134 (BIA 1984), “it is well settled that the birth of children in the United States by itself does not constitute a prima facie case of extreme hardship.” In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit in *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977), found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. In *Banks v. INS*, 594 F.2d 760, 762 (9th Cir. 1979), the Ninth Circuit found that an alien who is illegally within this country cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country. Thus, the fact that the applicant has U.S. citizen children is not sufficient, in itself, to establish extreme hardship.

Moreover, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The record reflects that [REDACTED] is concerned about separation from his wife and children if they live in Nigeria and about their safety there. The applicant has submitted no documentation of specific incidents of threats or violence directed against her or her family or against the family members of [REDACTED] (as shown in the Biographic Information, Form G-325A) who live in Nigeria to establish that she and her children would be in jeopardy there. 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)).

The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of [REDACTED], if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship, which certainly will be endured by the applicant's

husband, is unusual or beyond that which is normally to be expected upon deportation or exclusion. See *Hassan, Shoostary, Perez, Sullivan, supra*.

The present record is insufficient to establish that the applicant's husband would endure extreme hardship if he joined her in Nigeria.

The conditions in Nigeria, the country where [REDACTED] would live if he joins his wife, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

[REDACTED] states that [REDACTED] would not receive proper medical treatment and care for diabetes in Nigeria; however, the AAO finds that no medical records have been submitted to show that [REDACTED] has diabetes. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

[REDACTED] indicates that in Nigeria his life would be in jeopardy on account of his siblings, and that Nigeria is an unsafe country to raise their children. No documentation has been presented of specific incidents of threats or violence directed against [REDACTED] from his siblings and as previously stated, no evidence has been submitted of threats or violence directed against the applicant or her family or against [REDACTED]'s family members living in Nigeria. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

Although [REDACTED] and [REDACTED] claim that he would have extreme difficulty supporting himself and his family in Nigeria, no documentation has been submitted in support of this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. Furthermore, with regard to employment in Nigeria, U.S. court decisions have held that the difficulty an applicant may experience in securing employment and the hardships that flow from this are insufficient to establish extreme hardship. See, e.g., *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986) (Even a significant reduction in the standard of living is not by itself a ground for relief); *Matter of Pilch*, 21 I&N Dec. 627, 631 (BIA 1996) (loss of current employment, inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, or cultural readjustment do not constitute extreme hardship); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (difficulty in finding employment and inability to find employment in one trade or profession, although a relevant hardship factor, is not extreme hardship); *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) ("difficulty in finding employment or inability to find employment in one's trade or profession is mere detriment"); and *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975) (difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship).

Although hardship to the applicant's children is not a consideration under section 212(i) of the Act, the hardship endured by the applicant's husband, as a result of his concern about the well-being of his children, is a relevant consideration. The record indicates that the applicant and his wife have children who are eight, six, and three years old. [REDACTED] states that in Nigeria the applicant's children would be deprived of

freedom, would be exposed to life-threatening diseases, would not receive proper medical care, would be at risk of kidnapping, would be ridiculed for their connections to the United States, and in the case of the girls, would be forced to marry early and would be at risk of sexual assault. However, no documentation has been provided to show that the children would be deprived of freedom, exposed to life-threatening diseases, at risk of kidnapping, forced to marry early, and be at risk of sexual assault. No documentation shows that they would not receive proper medical care. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra.*

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

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

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.