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U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted] Office: CHICAGO, IL Date: MAY 02 2007

IN RE: [Redacted]

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:

[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, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Chicago, Illinois, 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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission into the United States by fraud or willful misrepresentation. The applicant has a U.S. citizen spouse and three U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated March 31, 2004.

On appeal, counsel asserts that the issue of extreme hardship has not been properly addressed, the decision is internally inconsistent, and there was a gross discrepancy in the application of *Matter of Cervantes-Gonzalez*. *Form I-290B*, dated April 29, 2004.

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

The record reflects that the applicant entered the United States on December 20, 1992 with another person's British passport. As a result of this prior misrepresentation, the applicant is inadmissible to the United States.

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.

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 a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant's children is not considered in a 212(i) waiver proceeding except to the extent that such hardship may affect the qualifying relative. 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of 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 has included a chart which compares the applicant's facts to the facts in *Matter of Cervantes-Gonzalez*. The AAO will consider this chart to the extent that it is relevant to the extreme hardship analysis.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that the applicant's spouse relocates to Nigeria or in the event that he remains in the United States, as he is not required to reside outside of the United States based on denial of the applicant's waiver request. Counsel asserts that the lack of financial ties to the United States was a negative factor in *Matter of Cervantes-Gonzalez*, whereas the possession of financial ties is used as a negative factor in the applicant's case. *Brief in Support of Appeal*, at 7, undated. The AAO notes that the lack of financial ties may be a negative factor in the first prong of the analysis, whereas the possession of economic means may provide evidence of the lack of financial hardship in the second prong of the analysis.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he relocates to Nigeria. The applicant's spouse's ties to the United States include his children. The record does not include evidence of the applicant's spouse's ties to Nigeria, other than reflecting that he was born in Nigeria and that his mother continues to reside there. *Applicant's Spouse's Form G-325A*, dated January 9, 1998. The record does not include information on country conditions in Nigeria, the financial impact of departure, significant conditions of health or any other relevant hardship factors. Counsel states that it is an abuse of discretion not to consider all of the facts presented. *Brief in Support of Appeal*, at 7. However, the record is nearly devoid of relevant facts and substantiating evidence of relevant facts. After a thorough review of the record, the AAO finds that extreme hardship has not been established in the event that the applicant's spouse relocates to Nigeria.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant's spouse states that he depends on the applicant to provide for the children and the unity of their home, and that if the applicant is removed, he will be deprived of his spouse. *Applicant's Spouse's Statement*, dated May 9, 2002. The record reflects that the applicant and her spouse have been married for over nine years. *Certification of Marriage, Office of the County Clerk, County of Cook, State of Illinois*, issued December 29, 1997. It does not, however, provide evidence, e.g., a psychological or medication evaluation, indicating that the applicant's removal would result in extreme

emotional hardship to the applicant. Counsel states that the applicant's spouse earned \$50,988 in 2001, the applicant contributed \$19,580 to the household income in 2001 and they have a house with an outstanding mortgage. *Brief in Support of Appeal*, at 5. The AAO notes that separation commonly entails financial and logistical problems. It finds no evidence in the record that establishes that the applicant's removal would result in extreme financial hardship to the applicant's spouse. Although the applicant's spouse may have to lower his standard of living in the absence of the applicant, such economic adjustment is common when a spouse is removed from the United States. Accordingly, the record does not include substantiating evidence of emotional or financial hardship that are beyond that normally experienced. The AAO finds that extreme hardship has not been established in the event that the applicant's spouse remains in the United States.

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.

Moreover, the AAO notes 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.

The AAO notes that 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 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, 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.