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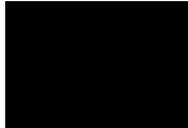
U.S. Citizenship
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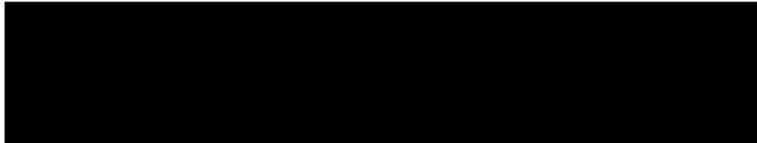
Applicant:



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 District Director, St. Louis, Missouri, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

It is noted that the applicant, through counsel, requested a 30-day extension to submit a brief and/or evidence, but nothing was submitted within 30 days. On December 20, 2007, in response to a facsimile from the AAO, counsel indicated that he would not be submitting further evidence. Therefore, the record must be considered complete.

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)(6)(C)(i) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting his nationality and citizenship as Liberian in order to receive Temporary Protected Status (TPS) and employment authorization. The record indicates that the applicant's spouse is a United States citizen. The applicant 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 with his United States citizen spouse, United States citizen daughter, and stepson.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on his wife and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated November 17, 2005. Additionally, the District Director determined that the applicant failed to disclose all of his misrepresentations and he "failed to accept responsibility for the single fraudulent act [he] *did* acknowledge." *Id.*

On appeal, the applicant, through counsel, asserts that the District Director "erred in finding that Applicant did not show requisite hardship to his U.S. Citizen wife in the event of his return to Nigeria." *Statement attached to Form I-290B*, filed December 16, 2005. Additionally, counsel contends that the District Director "erred in holding that Applicant did not sufficiently acknowledge past misrepresentation." *Id.*

The record includes, but is not limited to, a letter from the applicant's wife, a list of monthly household expenses, a letter from [REDACTED] regarding the applicant's daughter's medical condition, and various tax documents. The entire record was reviewed and considered in arriving at a decision on the appeal.

Regarding the applicant's misrepresentations in order to receive TPS and employment authorization, counsel states the District Director's determination on these misrepresentations was "factually inaccurate and legally immaterial and irrelevant to the adjudication of this waiver." *Id.* However, if the applicant only acknowledges one misrepresentation, even though the record establishes that the applicant misrepresented his nationality and citizenship on more than one occasion, then this evidence casts doubt on the reliability of the applicant's evidence in support of any immigration application before the Service. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The record establishes that the applicant submitted two TPS applications and two Applications for Employment Authorization, wherein he stated he was a national and citizen of Liberia. Additionally, at an

interview for one of the TPS applications, the applicant produced an identification card and birth certificate for himself, demonstrating that he was a national and citizen of Liberia. The AAO notes that on these documents that the applicant filed with the Service, he intentionally misrepresented his nationality and citizenship. Counsel's assertions do not overcome the fact that the applicant signed several documents under penalty of perjury. It was the applicant's responsibility to understand what he was signing. The AAO finds the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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

- (i) 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.

....

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

- (i) (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 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 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...

The AAO notes that the record contains several references to the hardship that the applicant's United States citizen daughter and stepson would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant's daughter and stepson will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that on June 23, 1990, the applicant entered the United States on a B-2 nonimmigrant visa, with authorization to remain in the United States until December 23, 1990. On September 17, 1991, the applicant filed an Application for Employment Authorization (Form I-765), which was approved on the same day. On June 22, 1992, the applicant filed another Form I-765. On October 20,

1992, the applicant divorced his first wife, a Nigerian citizen, in Nigeria.¹ On April 13, 1993, the applicant's TPS was withdrawn. On June 22, 1994, the applicant married his second wife in Missouri. On September 27, 1994, the applicant and his second wife divorced. On March 16, 1997, the applicant married [REDACTED], a United States citizen, in Missouri. On September 24, 1997, the applicant's wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On February 20, 2002, the applicant filed an Application for Travel Document (advance parole), which was approved on February 25, 2002. On January 23, 2003, the applicant applied for advance parole, which was approved on January 29, 2003. On November 19, 2003, the applicant's daughter, Osayawe, was born in Missouri. On October 25, 2005, the applicant filed a Form I-601. On November 17, 2005, the District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative. On March 27, 2006, the District Director denied the applicant's Form I-130 finding that the content in the applicant's decree of divorce from his first wife was fraudulent. On April 10, 2006, the applicant, through counsel, filed an appeal of the denial of the Form I-130 with the Board of Immigration Appeals (Board). On July 27, 2007, the Board dismissed the appeal.²

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(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. Hardship the alien himself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

Counsel contends that the District Director "erred in finding that Applicant did not show requisite hardship to his U.S. Citizen wife in the event of his return to Nigeria. Evidence presented clearly and convincingly proves extreme hardship to this qualifying relative." *Statement attached to Form I-290B, supra*. The applicant's wife states that the applicant is "a wonderful husband, father, and person. [Her] life is better

¹The AAO notes that the record does not establish the date the applicant married his first wife. Additionally, the submitted divorce decree from Nigeria was determined to be fraudulent by the Service.

²The AAO notes that since the applicant's Form I-130 was denied, there is no underlying petition to support the applicant's Form I-485 or Form I-601. However, since the applicant filed his appeal of the Form I-601 decision before his Form I-130 was denied, the AAO will adjudicate the Form I-601 appeal.

because [she has] [h]im. [She] love[s] him dearly and would love to spend the rest of [her] life growing old with him.” *Statement from* [REDACTED] dated October 13, 2005. The AAO notes that the applicant’s wife did not provide a statement regarding what, if any, hardship she would suffer if she joined the applicant in Nigeria. Additionally, it has not been established that the applicant has no family ties in Nigeria. Medical documentation in the record indicates that the applicant’s daughter has been diagnosed with sickle hemoglobin C disease; however, there was nothing from a doctor indicating exactly what the medical issues are, any prognosis or what assistance is needed and/or given by the applicant. *See letter from* [REDACTED] [REDACTED], M.D., Ph.D., *Saint Louis University*, dated August 24, 2005. The AAO notes that there was no documentation submitted establishing that the applicant’s daughter could not receive treatment for her medical condition in Nigeria, and there is no indication that the applicant’s daughter has to remain in the United States to receive her medical treatments. Additionally, as noted above, the applicant’s daughter is not a qualifying relative for a waiver under section 212(i) of the Act. It has not been established that the applicant’s daughter’s illness would affect his wife to the extent that it would cause her extreme hardship. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she joined the applicant in Nigeria.

In addition, counsel does not establish extreme hardship to the applicant’s spouse if she remains in the United States, maintaining her employment and access to medical care for their daughter. As a United States citizen, the applicant’s wife is not required to reside outside of the United States as a result of denial of the applicant’s waiver request. Further, the record fails to demonstrate that the applicant will be unable to contribute to his family’s financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The applicant’s wife faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the Board has held, “election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed.” *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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. The AAO recognizes that the applicant’s United States citizen wife will endure hardship as a result of separation from the applicant. However, her situation if she 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.

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 section 212(a)(6)(C)(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.