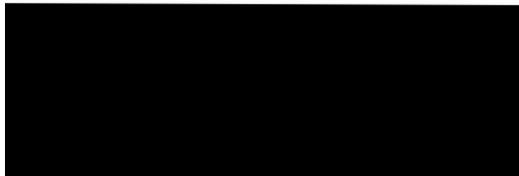


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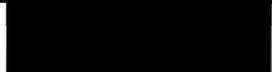
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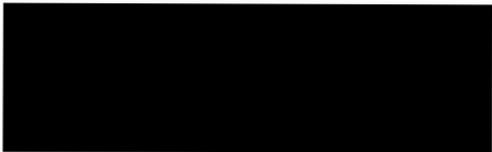
Applicant:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

*Michael Shumway*  
for

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Baltimore, Maryland, and 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)(6)(C)(i) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting his identity and marital status when entering the United States. The record indicates that the applicant is married to 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 wife and daughter.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated April 19, 2006.

On appeal, the applicant, through counsel, states "[t]he refusal of the applicant's admission to the United States would result in extreme hardship to his U.S. citizen spouse and U.S. citizen child." *Form I-290B*, filed May 19, 2006. Additionally, counsel asserts that the "applicant had not been married in Nigeria before he entered the United States." *Id.*

The record includes, but is not limited to, counsel's brief; letters and affidavits from the applicant, his wife, and mother; a psychological evaluation performed by [REDACTED] and the applicant's marriage certificate. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 references to the hardship that the applicant's daughter 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 will not be considered, except as it may cause hardship to the applicant's wife.

In the present application, the record indicates that on May 11, 1999, the applicant entered the United States on a B-2 nonimmigrant visa wherein he had misrepresented his identity and marital status. On December 23, 2003, the applicant's United States citizen 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 Resident or Adjust Status (Form I-485) and a Form I-601. On October 13, 2004, the applicant's Form I-130 and Form I-601 were approved. On April 18, 2004, the District Director revoked the applicant's approval of the Form I-130. The applicant filed an appeal of the Form I-130 revocation with the Board of Immigration Appeals (Board). The Service filed a motion to reopen the approval of the applicant's Form I-601, and on April 19, 2006, the District Director vacated the prior approval of the applicant's Form I-601. On the same day, the District Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to a qualifying relative. On September 25, 2007, the Board remanded the applicant's Form I-130 back to the District Director, based on the District Director's failure "to advise the [applicant] what evidence was needed to prove that no prior marriage existed." *Board's Decision*, dated September 25, 2007.

The applicant contends that he "was never previously married in Nigeria. The visa application form submitted to the American Embassy in Lagos, Nigeria shows that the marital status was checked married. This was a mistake, because the name and nationality of spouse was left blank, and never included in the visa application." *Letter from the applicant*, undated. The applicant's wife states the applicant "had no prior knowledge of what kind of information was included in the tendered Visa application or Passport application." *Affidavit from [REDACTED]*, dated July 27, 2005. The AAO finds that even though the applicant and his wife claim that he had no knowledge of the information in the visa application, the applicant's wife concedes that the applicant signed his visa application with a fictitious name, and subsequently used the fraudulently obtained visa to procure admission to the United States, and there is insufficient evidence to show that these misrepresentations were not willful.

The AAO finds that the applicant willfully misrepresented material facts in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C) of the Act.

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 asserts that the applicant's wife will suffer extreme hardship if the applicant is removed to Nigeria. *See Appeal Brief*, filed July 3, 2006. [REDACTED] diagnosed the applicant's wife with adjustment disorder with mixed anxiety and depressed mood. *See Psychological Evaluation by [REDACTED]* dated June 11, 2005. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's wife and a psychologist. There was no evidence submitted establishing an ongoing relationship between the psychologist and the applicant's wife. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The AAO notes that the applicant's wife is employed as an accountant and it has not established she has no transferable skills that would aid her in obtaining a job in Nigeria. The applicant's wife states her "daughter should be allowed to grow up in a normal family setting where she has the love, attention and support of both parents." *Letter from [REDACTED]* dated June 14, 2005. The applicant states his daughter "is very attached to [him]." *Letter from the applicant*, dated June 14, 2005. As noted above, the applicant's daughter is not a qualifying relative for a waiver under section 212(i) of the Act. Additionally, the applicant has not established that his daughter, who is 4 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of Nigeria. The AAO notes that the applicant's wife spent her formative years in Nigeria with her grandmother and great-grandmother. *See Psychological Evaluation by [REDACTED]* *supra*. 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, the applicant does not establish extreme hardship to his wife if she remains in the United States, in close proximity to her family and maintaining her employment. The applicant's wife states "Nigeria is not a place to bring up children." *Letter from* [REDACTED] 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. The applicant's wife states her daughter's "life will be disrupted if [the applicant] is not allowed to remain in the US.... [The applicant] has the primary responsibility for [their] daughter." *Id.* The AAO notes that it has not been established that the applicant's wife will be unable to provide or obtain adequate care for her daughter in the applicant's absence or that this particular hardship is atypical of individuals separated as a consequence of removal or inadmissibility. Additionally, the AAO notes that the applicant's wife's parents and siblings reside in area and it has not been established that they cannot help with caring for the applicant's daughter. *See Psychological Evaluation by* [REDACTED] *supra.* 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 wife 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.