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U.S. Department of Homeland Security  
20 Mass. Ave., NW, Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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**PUBLIC COPY**

[Redacted]

FILE:

[Redacted]

Office: CHICAGO, IL

Date: **MAY 22 2008**

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 Interim 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 under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen. 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 with her spouse and children.

The Interim District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Interim District Director*, dated May 12, 2006.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to her qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B*.

The record includes, but is not limited to, health insurance cards for the applicant and her spouse; a letter from their church; employment letters for the applicant and her spouse; a medical letter for the applicant's spouse; tax statements for the applicant and her spouse; a bankruptcy court order for the applicant's spouse; a mortgage loan for the applicant; bank statements for the applicant and her spouse; a car insurance policy for the applicant; and utility, electricity, water, and gas bills for the applicant. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that the applicant admitted to using a fraudulent document to gain admission to the United States in 1993. *Statement from the applicant*, dated September 7, 1999. The applicant had previously misrepresented herself on her Form I-485, Application to Register Permanent Residence or Adjust Status, she filed in January 12, 1998 when she indicated she entered the United States without inspection in 1993. *Form*

I-485. The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

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. The plain language of the statute indicates that hardship that the applicant or her children would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. Hardship to the applicant's children will be considered only to the extent that it affects a qualifying relative. If 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, 565-566 (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 a 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Nigeria or the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Nigeria, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse is a naturalized United States citizen from Nigeria. *See naturalization certificate. The parents of the applicant's spouse remain in Nigeria. Form G-325A, Biographic Information sheet, for the applicant's spouse.* The record does not address what additional family members the applicant's spouse may have in Nigeria. The applicant's spouse has been diagnosed with Diabetes Mellitus (uncontrolled) requiring multiple medications. *Statement from [REDACTED] MD, Bonaventure Medical Group, dated March 15, 2006.* The applicant's spouse also has hypertension and hyperlipidemia, both of which require medication. *Id.* In addition, all three conditions benefit from a strict diet regimen for optimal control. *Id.* The Addendum to the Form I-601 states that untreated hypertension and hyperlipidemia may lead to stroke and consequently the death of the applicant's spouse. *Form I-601, Addendum.* While the AAO acknowledges the health conditions of the applicant's spouse, it notes that the record does not include any information to establish that medical treatment would not be available to the applicant's spouse in Nigeria. The AAO also notes that the record fails to include any medical evidence that indicates the severity of the applicant's spouse's medical conditions and the extent to which they affect his daily life. *See 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)). Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *Id.* The record does not further address what

hardship, if any, the applicant's spouse would endure if he resided in Nigeria. When looking at the aforementioned factors, the AAO finds that the applicant has not demonstrated extreme hardship to her spouse if he were to reside in Nigeria.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant and her spouse financially support five children. *Form I-601, Addendum*. Although United States or lawful permanent resident children are not qualifying relatives for this particular case, the AAO, as previously noted, will consider the effect of hardship on the applicant's children on the applicant's spouse. The applicant asserts that if she is separated from her spouse, there will be only one income to support a family of six. *Id.* As a result, the applicant's spouse will suffer an extreme financial and economic burden, as he recently filed for bankruptcy. *Id.* However, the AAO notes that the applicant's spouse's debt was discharged as of October 27, 2005. *Discharge of Debtor, United States Bankruptcy Court, Northern District of Illinois*, dated October 27, 2005. Moreover, there is nothing in the record to demonstrate that the applicant would be unable to contribute to her family's financial well-being from Nigeria or that the applicant's spouse, who has been employed as a Certified Nurse Assistant (*Letter from [REDACTED] Human Resources Facilitator, Lutheran Home & Services*, dated February 25, 2005) is unable to work as a result of his medical conditions. The record also fails to indicate what type of care the applicant's children and stepchildren need and whether there are any additional family members in the United States who could assist the applicant's spouse with his child care responsibilities.

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. Separation from a loved one is a normal part of the removal process. In this particular case, the applicant has not shown that his emotional hardship is beyond the normal results that one endures. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in 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(a)(6)(C) 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.



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**ORDER:** The appeal is dismissed.