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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: ACCRA, GHANA

Date:

OCT 03 2008

IN RE: Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) and under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Acting Officer in Charge, Accra, Ghana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Nigeria, was found inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude, under section 212(a)(2)(B) of the Act, 8 U.S.C. § 1182(a)(2)(B), for multiple criminal convictions, and under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The Acting Officer in Charge also noted that the applicant had been convicted of an aggravated felony. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h) and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) in order to reside in the United States with his U.S. citizen spouse and children.

The acting officer in charge concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Acting Officer in Charge*, dated April 22, 2006.

In support of the appeal, the applicant provides a letter, dated May 12, 2006. The entire record was reviewed and considered in rendering this decision.

The record establishes that in February 1991, the applicant was convicted in the United States District Court for the Southern District of Mississippi for the offenses of Conspiracy, Wire Fraud, Bank Fraud and False Statement to Bank, violations of 18 U.S.C. §§371, 1343, 1344, 104. The court found that the "...he [the applicant] was charged with actually making a loan application for \$50,000. The entire scheme, however, encompassed in the four counts sought to obtain \$10.5 million...." *Judgment, United States Court of Appeals for the Fifth Circuit*, dated September 29, 1992. The applicant was sentenced to 33 months imprisonment, followed by three years of supervised release.¹

¹ As previously referenced, the Acting Officer in Charge, in his decision, concluded that one of the basis for which the applicant was inadmissible was under 212(a)(2)(B) of the Act, which provides, in pertinent part:

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

As noted above, the applicant's aggregate sentence to confinement was 33 months. Therefore, despite the acting officer in charge's conclusion to the contrary, the AAO finds that the applicant is not inadmissible under section 212(a)(2)(B) of the Act.

A. INADMISSIBILITY BASED ON CONVICTION FOR AGGRAVATED FELONY UNDER SECTION 212(H) OF THE ACT

Section 212(a)(2) of the Act provides, in pertinent part:

(A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

The Attorney General [now Secretary, Homeland Security, (Secretary)] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

- (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General (Secretary) that -
 - (i) . . . the activities for which the alien is inadmissible . . . occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
 - (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
 - (iii) the alien has been rehabilitated; or
- (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General (Secretary) that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien
- (2) The Attorney General (Secretary), in his discretion . . . has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

. . . No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent

residence if either since the date or such admission the alien has been convicted of an aggravated felony. . .

A lawful permanent resident is deportable if convicted of an aggravated felony at any time after admission. *Matter of Rosas*, 22 I & N Dec. 616 (BIA 1999). The record indicates that the applicant was admitted to the United States on September 9, 1987 as a lawful permanent resident. The conviction referenced above occurred in 1991, approximately three years after being admitted to the United States as a lawful permanent resident. Moreover, the above conviction is an aggravated felony under section 101(a)(43) of the Act, which states:

The term “aggravated felony” means—

(M) an offense that—

(i) involves fraud or deceit in which the loss to the victim or victim exceeds \$10,000...

(U) an attempt or conspiracy to commit an offense described in this paragraph.

Thus, based on the record, the applicant is statutorily ineligible for a waiver under section 212(h) of the Act based on his conviction for an aggravated felony as a lawful permanent resident of the United States.²

The applicant is also inadmissible to the United States under sections 212(a)(2)(A)(i)(I) and 212(a)(9)(B)(i)(II) of the Act, as further discussed below.

² The applicant, in support of his appeal, contends that he was convicted for a crime of moral turpitude, not for an aggravated felony. *Letter from* _____ dated May 12, 2006. Possibly, that the applicant makes this assertion based on the Oral Decision of the Immigration Judge with respect to the applicant’s deportation proceeding, dated July 15, 1994, which references the applicant’s crimes involving moral turpitude and does not reference that the applicant was convicted for an aggravated felony.

The AAO notes that the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996) [IIRIRA] made the definition of aggravated felony retroactive for all crimes committed before, on or after the date of enactment (i.e., September 30, 1996). Under § 321(b) of IIRIRA, the effective date of the definition of aggravated felony is retroactive covering all crimes within the definition irrespective of the date of commission. As such, although the applicant’s conviction may not have been deemed to be for an aggravated felony when the immigration judge wrote his decision in 1994, the conviction was classified as an aggravated felony in September 1996, based on IIRIRA’s enactment.

B. INADMISSIBILITY BASED ON CONVICTION FOR CRIME INVOLVING MORAL TURPITUDE UNDER SECTIONS 212(h)(1)(A) AND (B)

The AAO concurs with the acting officer in charge that the applicant's conviction was for crimes involving moral turpitude.³ For purposes of a waiver under section 212(h)(1)(A) of the Act, the AAO notes that the referenced crimes occurred in 1990, more than fifteen years ago. However, the applicant has failed to establish that the admission to the United States would not be contrary to the national welfare, safety, or security of the United States. Moreover, no documentation has been provided that confirms that the alien has been rehabilitated. As such, even if the AAO had not determined that the applicant is statutorily ineligible for a waiver based on his conviction for an aggravated felony as a lawful permanent resident, as discussed in detail above, the AAO concludes that the applicant is ineligible for a waiver of inadmissibility under section 212(h)(1)(A) of the Act.

Alternatively, to be eligible for a waiver for a crime involving moral turpitude under section 212(h)(1)(B) of the Act, it must be established that the inadmissibility bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son or daughter of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to section 212(h)(1)(B) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen spouse and children.

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. These 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.

The applicant's spouse states that she and her children are suffering emotional hardship due to the applicant's inadmissibility. As stated by the applicant's spouse:

I am having a very hard time trying to keep everything going alone with 2 girls in college, 3 children at home, a house note, a car note and other bills pertinent to a family.... The children miss their dad very much....

...The children are a handful (3 young ones) by myself....

Letter from [REDACTED], dated September 30, 2004.

³ The AAO notes that the applicant does not contest the acting officer in charge's finding that he was convicted of a crime of moral turpitude.

Although the depth of concern and anxiety over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship and familial and emotional bonds exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

The applicant has not established that his U.S. citizen spouse and/or children are unable to travel to Nigeria on a regular basis to visit with the applicant. Moreover, no documentation has been provided from a mental health professional that establishes that the applicant's spouse's and/or children's emotional hardship due to the applicant's physical absence from the United States is extreme. Finally, the record indicates that two of the applicant's children are adults. It has not been established that they are unable to assist the applicant's spouse and/or younger children emotionally should the need arise. 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 applicant further contends that his U.S. citizen spouse and children are suffering financial hardship due to the applicant's absence. As stated by the applicant, "[m]y wife had under gone [sic] outdoor surgery presently she lost her job.... My children are going through...financial hardship, this affect their behavior and performance in school..." *Supra* at 1. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that the "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.").

In this case, no financial documentation has been provided to establish the applicant's and his spouse's current economic situation, including detailed information about their income and expenses, to corroborate that the applicant's spouse and/or children are suffering extreme financial hardship due to the applicant's inadmissibility. Nor has it been established that the applicant is unable to obtain gainful employment in Nigeria, thereby assisting with the U.S. household expenses. Moreover, although the applicant states that his spouse lost her job and references that she had surgery, no documentation has been provided to establish that

the applicant's spouse is unable to work. Finally, no objective documentation has been provided that establishes that the applicant's young children's education is suffering due to the applicant's inadmissibility. While the applicant's spouse may need to make adjustments with respect to the family's financial situation and the young children's education while the applicant resides abroad due to his inadmissibility, it has not been shown that such adjustments would cause the applicant's U.S. citizen spouse and/or children extreme hardship.

The AAO recognizes that the applicant's spouse and children will endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not been established that the applicant's U.S. citizen spouse and/or children are suffering extreme emotional and/or financial hardship due to the applicant's absence.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. In this case, the applicant has not asserted any reasons why his U.S. citizen spouse and/or children are unable to relocate to Nigeria, or any other country of their choosing, to reside with the applicant. Thus, the AAO concludes that even if the AAO had not determined that the applicant is statutorily ineligible for a waiver based on his conviction for an aggravated felony as a lawful permanent resident, the acting officer in charge correctly concluded that the applicant was ineligible for a waiver of inadmissibility under section 212(h)(1)(B) of the Act.

C. INADMISSIBILITY BASED ON UNLAWFUL PRESENCE UNDER SECTION 212(A)(9)(B)(V) OF THE ACT

The applicant is also ineligible for a waiver under section 212(a)(9)(B)(v) of the Act. Section 212(a)(9)(B)(i)(II) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is

the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien....

The record indicates that the applicant was ordered to surrender himself for deportation on October 20, 1997, based on a September 18, 1997 Order of Removal. However, the applicant did not depart the United States until June 3, 2000. As the applicant remained unlawfully in the United States for more than one year and then sought admission within ten years of his last departure, the acting officer in charge correctly found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act.⁴

As the AAO has already determined that extreme hardship has not been established with respect to the applicant's spouse and/or children in relation to a waiver of inadmissibility for a crime of moral turpitude, the applicant has not established eligibility for a waiver under section 212(a)(9)(B)(v) of the Act.

D. CONCLUSION

In conclusion, a review of the documentation in the record, when considered in its totality, reflects that the applicant is statutorily ineligible for a waiver under section 212(h) of the Act based on his conviction for an aggravated felony as a lawful permanent resident of the United States. The AAO further finds that under sections 212(h)(1)(B) and 212(a)(9)(B)(v) of the Act, the applicant has failed to show that his qualifying relatives would suffer extreme hardship if he were not permitted to return to the United States, and moreover, the applicant has failed to show that his qualifying relatives would suffer extreme hardship were they to relocate to Nigeria, or any other country of their choosing, to accompany the applicant. The record demonstrates that the applicant's family faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Finally, under section 212(h)(1)(A) of the Act, the applicant has failed to demonstrate that his admission would not be contrary to the national welfare, safety or security of the United States and that he has been rehabilitated.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.

⁴ The Acting Officer in Charge makes a reference in his decision to the fact that the applicant entered the United States on or about 1978 but remained in the U.S. for over twenty years without a visa. *See Decision*. The AAO notes that the unlawful presence provisions of section 212(a)(9)(B)(i)(II) of the Act did not become effective until April 1, 1997. As such, any unauthorized presence by the applicant in the United States prior to April 1, 1997 is irrelevant to the AAO's analysis of this inadmissibility ground.