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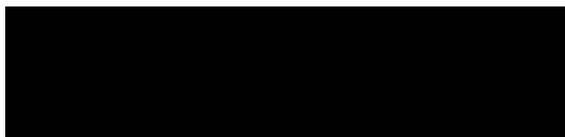
U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: SEP 11 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 PETITIONER:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 sought admission to the United States by fraud or willful misrepresentation. The applicant is married to a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his spouse.

The service center director concluded 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 Inadmissibility (Form I-601) accordingly. *Decision of the Service Center Director*, dated April 26, 2006.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (CIS) erred in determining that the applicant's wife would not suffer extreme hardship if the applicant is removed from the United States. Specifically, counsel states that the applicant's wife suffers from a serious medical condition for which she requires long-term treatment that would not be available in Nigeria. *See Brief in Support of Appeal* at 5-6. Counsel further states that several factors, when considered in the aggregate, amount to extreme hardship to the applicant's wife. These factors include the applicant's wife's family ties in the United States and lack of family ties in Nigeria, political and social conditions in Nigeria, and the financial impact of the applicant's departure. *See Brief* at 7-11. Counsel additionally asserts that the applicant's inadmissibility is due to his reliance on the advice of his former attorney, whose "representation of [REDACTED] was so deficient as to constitute ineffective assistance of counsel." *Brief* at 13-15. Counsel states that the applicant has filed a complaint against his former attorney and otherwise complied with the requirements set out by the Board of Immigration Appeals (BIA) in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), and therefore, "[a] fortiori, an ineffective representation claim that has merit and that complies with the requirements set forth in *Lozada* should be granted as a matter of law." *Brief* at 16.

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

- (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:

- (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 AAO notes that the applicant was ordered removed by the immigration judge at the end of proceedings under section 240 of the Act initiated upon his arrival in the United States and was removed to Nigeria on November 12, 1998. *See Notice to Alien Ordered Removed/ Departure Verification (Form I-296)* dated November 12, 1998. He returned to the United States as a visitor three times in 2002 before his last entry on May 25, 2003. *See Form I-601; copy of applicant's passport.* The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act because he was removed from the United States and did not remain outside the United States for a period of five years. *See* 8 C.F.R. § 212.2(a). The applicant is therefore required to file an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) with the district director in conjunction with his application for adjustment of status. *See* 8 C.F.R. § 212.2(e).

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. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's wife. 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 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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. *Id.* at 566. The BIA has further stated:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). 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).

U.S. court decisions have additionally 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 BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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 v. INS*, *supra*, the court further held 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 U.S. Supreme Court additionally 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.

In the present case, the record reflects that the applicant is a thirty-four year-old native and citizen of Nigeria who initially attempted to enter the United States on June 3, 1998 with a fraudulent Austrian passport under the name [REDACTED]. The applicant was detained and placed in expedited removal proceedings. After it was determined he had a credible fear of persecution, he was served with a Notice to Appear and applied for asylum before the immigration judge. During his asylum hearing the applicant’s attorney, after a discussion with the immigration judge and the attorney for the Immigration and Naturalization Service (INS, now Immigration and Customs Enforcement), advised him to withdraw his asylum application and informed him he would not be barred from returning to the United States if he did so.¹ The applicant was then ordered removed by the Immigration Judge. See *Order of the Immigration Judge* dated October 14, 1998. The applicant was removed to Nigeria and then traveled to Austria, where he completed a master’s degree and then applied for and received a visitor’s visa from the U.S. Consulate in Vienna. The applicant claims that on the advice of his former attorney, he stated that he had never been to the United States or been in removal proceedings when he applied for the visa. See *Affidavit of [REDACTED]* dated October 15, 2007. The applicant returned to the United States as a visitor for pleasure on May 25, 2003, and has remained in the country since that date. He married his wife, a native of Nigeria and Citizen of the United States, on June 10, 2003. They reside together in Suwanee, Georgia with their two U.S. Citizen daughters and the applicant’s mother-in-law.

Counsel asserts that the applicant’s wife would suffer extreme emotional, physical, and economic hardship if she were to relocate to Nigeria with the applicant. In support of this assertion, counsel submitted a letter from the applicant’s doctor indicating that she suffers from hypothyroidism as a result of treatment she received for Graves Disease several years ago. See *letter from [REDACTED]* dated October 11, 2005. The letter further states that she will need lifelong replacement with thyroid supplementation and faces possible long-term complications including weight gain, elevated lipids, and risk of coronary artery disease. Counsel states that the applicant’s wife would not have access to treatment for her condition if she relocated to Nigeria because of limited resources there, and cites a report by the United Kingdom Department for International Development that states,

¹ It is not clear from the record why the applicant was advised to withdraw his application at that time, but it appears he was informed that if he did so, the fraud charge against him would be withdrawn. It further appears that the applicant’s former attorney erroneously informed him he was withdrawing his application for admission, when, in fact, he was ordered removed from the United States by the Immigration Judge.

Inadequate financial resources (\$2-3 per capita) for the health sector is a major problem. Since the beginning of the economic crisis in the 1980s the health sector had suffered dramatically as has all other public service activity. Development and recurrent expenditure has declined resulting in a scarcity of drugs and medical supplies, and the deterioration of facilities. *See Brief* at 12.

Counsel additionally asserts that due to social and political conditions in Nigeria, in particular widespread violations of women's rights, the applicant's wife would suffer extreme hardship. Counsel states that because women are "treated as second class citizens" and because of the high rate of violent crime, the applicant's wife and their daughters would be at risk if they relocated there. *Brief* at 9-10. Counsel cites the U.S. Department of State's Country Report on Human Rights Practices for 2006, which states that discrimination against women, including "considerable economic discrimination," is a serious problem and women overall remain marginalized. *See Brief* at 9. The report further states that customary practices can prevent a woman from owning land or inheriting her husband's property, and as a result, "many widows were rendered destitute when their in-laws took virtually all of the deceased husband's property." *See U.S. Department of State, Country Reports on Human Rights Practices – Nigeria, 2006, Exhibit 15.* The applicant's wife further states that conditions in Nigeria would cause her to worry about her daughters' safety, and further states,

Under cultural believe (sic) in the place where my husband is from (Benin, Edo State) my two little girls would be subjected to genital mutilation. . . . I was made to go through this ordeal and the resulting trauma and damage has affected me psychological (sic) and [I] have to live with the pain ever since. *Affidavit of [REDACTED]* dated October 15, 2007.

Documentation submitted with the appeal indicates that female genital mutilation (FGM) is practiced in all parts of Nigeria, but is most prevalent in the south. *See U.S. Department of State, Country Reports on Human Rights Practices, Exhibit 15.* The report states, "the federal government publicly opposed FGM but took no legal action to curb the practice." *Id.*

When considered in aggregate, the factors of hardship to the applicant's wife should she relocate to Nigeria constitute extreme hardship. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The letter from the applicant's doctor and documentation on conditions in Nigeria establish that the applicant's wife suffers from a serious medical condition for which she requires ongoing treatment and would have difficulty receiving adequate care for the condition if she relocated to Nigeria. Counsel also asserts that the applicant's wife would suffer emotional and economic hardship if she were to relocate to Nigeria due to social and political conditions, fear for her daughters' safety, and the loss of the family's income if she and the applicant relocated there. The physical hardship the applicant's wife would experience, when combined with financial and other hardships, would amount to extreme hardship if the applicant were removed from the United States and his wife relocated to Nigeria.

Counsel additionally asserts that the applicant's wife would suffer extreme emotional and financial hardship if she remained in the United States without the applicant. In support of these assertions, counsel submitted letters from the applicant's physician and a psychologist that state she is suffering from major depression and

anxiety. The applicant's wife's physician states that she has developed "severe anxiety neurosis to complicate pre-existing depression" and requires antidepressant medications. He further states,

It is evident that her current family crisis aggravates the situation. The evaluation of her therapist shows a breakdown in her social and emotional fabric which may lead to suicidal ideations. It is strongly recommended that she remain in the United States to receive appropriate medical care, and will need the social and emotional support that an intact family only can provide. *Letter from [REDACTED] dated May 23, 2006.*

A letter from the applicant's wife's psychotherapist states that the applicant's wife has received counseling for "issues with Major Depression that have been retriggered with the fear of losing her husband." *See letter from [REDACTED] LCSW, dated May 17, 2006.* The letter further states,

She is experiencing overwhelming fear about how she will be able to support her two children emotionally and financially should her husband be forced to leave. The impact of these symptoms has made it difficult for her to do her job effectively. In fact, during our last appointment, she indicated that she has had to take off some time from work due to her depression. *Letter from [REDACTED]*

Counsel submitted additional documentation indicating that the applicant's wife takes care of her mother, an eighty-four year-old Lawful Permanent Resident who resides with the applicant and his wife, suffers from diabetes and hypertension, and has been partially disabled by a stroke. *See copies of medical records and Permanent Resident Card for [REDACTED], Exhibits 30 and 31.* In addition, counsel has submitted documentation indicating that depression is a common symptom of hypothyroidism, the condition the applicant's wife suffers from. *See information on hypothyroidism from the websites of the Mayo Clinic and the Hormone Foundation, Exhibits 24 and 25.*

As noted above, significant conditions of health are relevant factors in establishing extreme hardship. The letters from the physician and psychotherapist who have evaluated and treated the applicant's wife indicate that she is experiencing symptoms of severe depression and anxiety and is receiving psychotherapy. The evidence on the record establishes that the applicant's wife's psychological condition is serious and could be exacerbated by her chronic medical condition. In light of this history of depression, it appears that the emotional hardship that would result if she were separated from the applicant would be unusual or beyond that which would normally be expected upon deportation or exclusion. Counsel further asserts that the applicant's wife would suffer severe financial hardship if she loses the applicant's income. Information on the record indicates that the applicant's wife's depression has interfered with her employment and could thus cause additional financial hardship if she becomes unable to work. The applicant's wife is also primarily responsible for the care of her elderly mother, who suffers from various ailments and is partially disabled. The emotional and financial strain of caring for her mother would result in additional hardship if the applicant's wife were left alone in the United States to care for her mother and two daughters.

The emotional hardship the applicant's wife would experience, when combined with financial and other hardships, would amount to extreme hardship if the applicant were removed and she remained in the United States. This finding is largely based on evidence submitted with the appeal that documents her history of major depression and anxiety. Separation from the applicant, combined with the financial hardship that

would result from losing the applicant's income, would cause the applicant's wife great emotional distress that would jeopardize her mental health. Further, as noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998).

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(i) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives). *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's immigration violations, including the applicant's attempt to enter the United States by presenting a fraudulent passport. The applicant also concealed his prior trip to the United States and his subsequent removal when he applied for and obtained the visitor's visa he used to re-enter the United States. The AAO notes, however, that the applicant claims he relied on the advice of his former attorney, who indicated that he had withdrawn his application for admission and therefore could say he had never been present in the United States. Counsel submitted a letter from the applicant's former attorney in which she incorrectly stated that he had withdrawn his application for admission and was therefore not required to wait five years before legally returning to the United States. *See letter from* [REDACTED] dated January 7, 1999. It therefore appears that the applicant was given incorrect information from his attorney on the consequences of his removal from the United States, and the AAO has taken this fact into consideration.

The favorable factors in the present case are the applicant's significant family ties to the United States, including his wife, daughters, and mother-in-law; the extreme hardship to the applicant's wife if he is compelled to depart the United States; hardship to the applicant's daughters if they are separated from their father or if they relocate to Nigeria with their parents; the applicant's affidavit explaining the reasons he attempted to enter the United States in 1998 with a fraudulent passport and the statements he made on his nonimmigrant visa application in 2001; letters from friends and the pastor of the applicant's church stating

that he is a person of good moral character and works hard to support his family; and his lack of a criminal record.

The AAO finds that the applicant's violations of the immigration laws cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh this adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.