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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

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: BALTIMORE, MD

Date: SEP 19 2008

Relates)

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.

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 District Director, Baltimore, Maryland 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 attempted to procure an immigration benefit by fraud or willful misrepresentation. 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 her U.S. citizen spouse and two U.S. citizen children.

The 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 District Director*, dated December 16, 2002.

On appeal, the applicant states that her spouse and children would suffer emotional and psychological hardship if she were removed from the United States. *Form I-290B and attached statement*.

In support of these assertions, the applicant submits a statement. The record also includes statements from the applicant's children; copies of the U.S. birth certificates for the applicant's children; affidavits from the applicant and friends attesting to the applicant's date of birth; letters of support from family members and friends; tax statements for the applicant; tax statements for the applicant's daughter; earnings statements for the applicant; earnings statements for the applicant's daughter; a Form W-2 for the applicant; and a statement from the Nigerian Embassy. 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, through prior counsel, submitted fraudulent employment letters in connection with her first Form I-485 application documenting her presence in the United States from 1983 through 1989. As such, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to obtain an immigration benefit under the Act through fraud or willful misrepresentation. The AAO notes that, although the applicant contends that she was unaware that her Form I-485 was supported by

any fraudulent documentation, her claim is not supported by the record. The applicant indicates on her Form I-485 filed in 1990 that she had last arrived in the United States in 1971. In support of the 1971 arrival date, the applicant submitted an affidavit from a friend who states that she has known the applicant in the United States since 1971, a second affidavit from another friend who swears that the applicant has lived in Washington, DC from 1971 until the present (1990), and a third affidavit giving the two U.S. addresses where the applicant resided from November 1971 until 1990. At the time of her 1994 asylum application, the applicant submitted a written statement indicating that she had returned to Nigeria in December 1982 and had remained there until early 1989. This statement is supported by her testimony during her 2001 adjustment interview and her Form I-94 which state that the applicant last arrived in 1989. While the applicant asserts on appeal that it was her former lawyer who obtained the fraudulent employment letters which state that the applicant was employed in the United States from 1983 until 1989, she indicates that she supplied the other documentation. Accordingly, the AAO does not find the applicant's claim to have been unaware that fraudulent documentation was submitted in support of her first Form I-485 to be credible.

A section 212(i) waiver of inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that inadmissibility imposes extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The AAO notes that the District Director erred in stating that the applicant's U.S citizen children are qualifying relatives for the purposes of this case. *Decision of District Director*, dated December 16, 2002. The plain language of the statute indicates that hardship that the applicant herself or her children would experience upon her removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only hardship relevant to eligibility in the present case is the hardship that would be suffered by the applicant's U.S. citizen spouse if the applicant is removed. Hardship to the applicant's children will be considered to the extent that it affects the applicant's spouse. 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. There is nothing in the record to address how the applicant's spouse would be affected if he were to reside in Nigeria. The AAO notes that the applicant's spouse was born in Nigeria.

*Form G-325A, Biographic Information sheets, for the applicant.* The record does not address what family members the applicant's spouse may have in Nigeria. The record does not address whether the applicant's spouse suffers from any significant health conditions for which he may not be able to receive adequate care in Nigeria. The record does not address the financial impact upon the applicant's spouse if he were to reside in Nigeria. 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 Nigeria.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. Apart from the applicant and their children, the record does not address what family ties the applicant's spouse has in the United States. The record does not address how the applicant's spouse would be economically affected by the removal of the applicant. The record does not address how any hardship experienced by the applicant's children would impact the applicant's spouse, the only qualifying relative in this case. The AAO notes that the applicant's children are adults. *Statements from the applicant's children*, dated January 8, 2003.

The applicant states that her spouse would suffer emotional and psychological hardship if she is removed from the United States. *Statement from the applicant*, dated January 8, 2003. While the AAO acknowledges that the applicant's spouse would be affected emotionally by his wife's removal from the United States, it finds no documentary evidence in the record, e.g., an evaluation from a licensed health professional, that demonstrates the effect of her removal on his physical or mental health. *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.* Accordingly, the applicant has not established that her husband's emotional and psychological responses to her removal would be beyond those normally experienced by spouses in similar situations.

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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not establish that his situation, if he remains in the United States, is different from other individuals separated as a result of removal. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in the United States following her removal.

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.

**ORDER:** The appeal is dismissed.