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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H2

[REDACTED]

FILE: [REDACTED] Office: DENVER, COLORADO Date: APR 03 2009

IN RE: Applicant: [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:
[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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Denver, Colorado, 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 into the United States by fraud or willful misrepresentation. The applicant is the husband of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. The applicant 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 wife.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated December 20, 2006.

On appeal, counsel states that Citizenship and Immigration Services (“USCIS”) committed error and abused its discretion in determining that the applicant had failed to establish that his removal would result in extreme hardship to his wife. Specifically, counsel states that the decision failed to consider evidence that the applicant’s wife would suffer extreme hardship if she relocated to Nigeria with the applicant and that she would suffer psychological hardship if she remained in the United States without the applicant. *See Counsel’s Brief in Support of the Appeal*. Documentation submitted with the waiver application and appeal includes the following: Affidavits prepared by the applicant and his wife, letters from the applicant’s stepchildren and friends in support of the waiver application, a letter from the applicant’s church, a letter from the applicant’s employer, a psychological evaluation of the applicant’s wife, photographs of the applicant with family members, and information on conditions in Nigeria. 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:

- (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 [Secretary] may, in the discretion of the [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 [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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 Board of Immigration Appeals (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.

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. 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 forty-eight year-old native and citizen of Nigeria who has resided in the United States since December 29, 2001, when he entered using a fraudulent Guinean passport and A2 visa under the name [REDACTED]. The applicant married his wife, a fifty year-old native and citizen of the United States, in January 2003. They reside in Colorado Springs, Colorado.

Counsel asserts that the applicant's wife would suffer extreme hardship if she relocated to Nigeria due to unstable conditions there, her inability to speak any native language, and difficulty assimilating to the culture. Counsel further asserts that the applicant's wife would be unable to find employment or receive treatment for depression in Nigeria, and would suffer psychological hardship due to separation from her children and grandchildren. As evidence of this hardship, counsel submitted information on economic, social, and political conditions in Nigeria and declarations from the applicant, his wife, and her adult children. The documentation submitted indicates that there are ongoing violent conflicts in certain parts of Nigeria between different ethnic and religious groups, and the rate of violent crime and crimes against foreign nationals is high. *See U.S. Department of State, Consular Information Sheet – Nigeria*, dated January 13, 2006. The Consular Information Sheet additionally states that unauthorized checkpoints throughout the country and frequent general strikes, in which violence is used to discourage travel, as well as poor medical facilities and counterfeit pharmaceuticals, are problems in Nigeria.

In her affidavit the applicant's wife states that she would suffer financial hardship if she and the applicant relocated to Nigeria because he sold his business there before leaving and she would be unable to find employment due to her age and lack of a college degree. *See affidavit of [REDACTED]* dated September 1, 2006, at 3. She further states that she would be relegated to "second class citizen status" in Nigeria because she is a woman, would fear for her life due to civil unrest there, and would suffer hardship and stress if she were separated from her family members, all of whom reside in the United States. *Id.* at 3-4.

The applicant's wife has lived her entire life in the United States and her entire family, including her children and grandchildren, reside near her and the applicant in Colorado. Upon review of the evidence on the record, it appears that the emotional hardship resulting from separation from her family and having to adjust to social conditions in Nigeria, combined with the civil strife, high rate of violent crime, and poor economic conditions, would amount to extreme hardship to the applicant's wife if she were to relocate to Nigeria with the applicant.

Counsel asserts that the applicant's wife would suffer extreme hardship if she remained in the United States, including emotional and psychological hardship as a result of being separated from the applicant. In her affidavit, the applicant's wife states, "[REDACTED] is a wonderful husband, stepfather, and grandfather He has changed all of our lives for the better and I am so thankful for such a good, kind and helpful man. . . . I cannot imagine my life without him by my side; if he is taken from me I will suffer deeply." *Affidavit of [REDACTED]* at 2-3.

An evaluation prepared by a psychologist who evaluated the applicant's wife states that she has sought psychotherapy services in the past to address symptoms of depression, "that have been with her for most of her life." *Psychological Evaluation by [REDACTED]* Dr. [REDACTED] further states that any forced separation from the applicant would have "extensive negative impacts" on both the applicant and his wife, with his wife in particular experiencing extreme emotional distress. *Id.* He states that the applicant has helped his wife develop a sense of stability and belonging that was previously absent from her life, and separation from him would "be highly likely to result in a depressive episode." *Id.* [REDACTED] states that she appears to be experiencing an Adjustment Disorder with Mixed symptoms of Anxiety and Depression and referred her to seek counseling through the providers authorized to provide these service by her employment based insurance. *Id.*

The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letter is based on a psychological evaluation of the applicant's wife, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's wife or any history of treatment for her depression. The conclusions reached in the submitted evaluation, which appear to be based on three interviews conducted either together with the applicant or separately, do not reflect the insight commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The AAO further notes that although the applicant's wife indicated during the evaluation that she had sought psychotherapy in the past, no information was submitted to indicate that she has been diagnosed with or treated for depression or any other psychological condition in

the past. Further, although [REDACTED] states that the applicant's wife was referred for further counseling, there is no evidence that she received any further treatment. The evidence on the record is insufficient to establish that the emotional effects of being separated from the applicant are more serious than the type of hardship a family member would normally suffer when faced with her spouse's deportation or exclusion. Although the depth of her concern over the applicant's immigration status is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation always results in considerable hardship to individuals and families. But 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 exists.

The emotional and financial hardship the applicant's wife would suffer if she remains in the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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)

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. Citizen spouse would suffer extreme hardship if he were removed and she remained in the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, 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.