



U.S. Citizenship
and Immigration
Services

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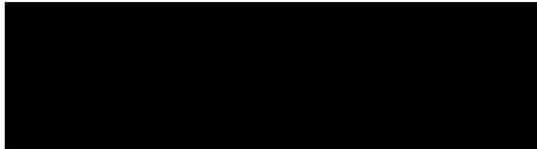
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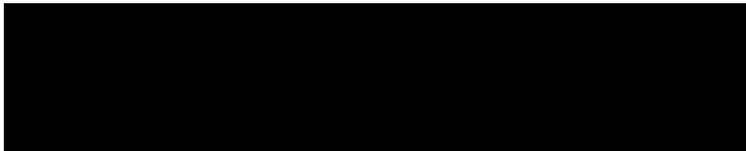
Date: DEC 08 2009

IN RE:



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

ON BEHALF OF APPLICANT:



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

A handwritten signature in black ink that reads "Michael Shumway".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Chicago, Illinois denied the waiver application that is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record in the instant case contains two Form I-130 Petitions for Alien Relative filed for the applicant as beneficiary. One was filed by the applicant's husband and was approved on February 3, 2005. The other was filed by a son of the applicant on March 30, 2008 and has not yet been adjudicated. The Form I-601, the denial of which is the act which precipitated the instant appeal, was pertinent to the first Form I-130.

The applicant is currently representing that she is a native and citizen of Nigeria, the wife of a United States citizen, and the mother of three U.S. citizen children. The District Director found the applicant to be inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act) for having been convicted of a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her husband and children. The District Director also found that the applicant had not demonstrated that denial of the waiver application would result in extreme hardship to a qualifying relative as described in section 212(h) of the Act, and denied the application accordingly.

On appeal, counsel asserted that the applicant's husband and children would suffer extreme hardship if the applicant is not permitted to remain in the United States. Although counsel did not appear to contest the district director's determination of inadmissibility, the AAO will review that determination.

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

(i) In general. – Except as provided in clause (ii), any 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].

(ii) Exception. – Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the

extent to which the sentence was ultimately executed).

Although the applicant had not revealed to the USCIS that she ever previously used the name [REDACTED] or any similar name, a search of the records of the Federal Bureau of Investigation's Criminal Justice Information Services records of crimes indicates that she was arrested, on November 10, 1982, under the name [REDACTED] for false statements and mail fraud. (Agency case number [REDACTED])

More specifically, an investigation revealed that the applicant, then using the name [REDACTED] and Alien number [REDACTED] and representing herself to be a native and citizen of Liberia, born on September 14, 1954, was among 110 foreigners who fraudulently applied for and illegally received a total of more than \$500,000 in student loans and grants. The applicant represented herself as a U.S. citizen for the purpose of this fraud and received approximately \$10,768 in Federal and state funds.

On January 10, 1983, the applicant was found guilty, pursuant to her pleas, of a violation of Title 18 USC Section 1341, Fraud, and a violation of Title 18 USC Section 1001, False Statements. On February 16, 1983, the applicant was sentenced to two years on each count, the sentences to run concurrently, and was fined \$1,000. The execution of the sentences of imprisonment were suspended and the applicant was placed on five years probation. ([REDACTED])

A Form I-703 Record of Action in the record shows that, on June 22, 1983, the applicant was deported to Nigeria.

Section 1341 as in effect on the date of the applicant's offense provided:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than \$1,000 or imprisoned not more than 20 years, or both.

¹ The applicant had legally changed her name from [REDACTED] to [REDACTED] on August 2, 1982. Nevertheless, she apparently identified herself as [REDACTED] when she was arrested.

Section 1001 as in effect on the date of the applicant's offense provided:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

Any crime involving Fraud is a CIMT. *Burr v. INS*, 350 F.2d 87, 91 (9th Cir. 1965), cert. denied, 383 U.S. 915 (1966). The applicant's conviction for violating 18 USC Section 1341 is, therefore, a conviction of a crime involving moral turpitude.

When the applicant entered the United States on November 24, 1975 she presented a passport that indicated that she was [REDACTED] a citizen of Liberia born in Monrovia on September 14, 1954. When the applicant entered the United States more recently,² she presented a passport showing that her name is [REDACTED], and that she is a Nigerian citizen born on September 14, 1950.

The applicant was arrested for her crimes on November 10, 1982. Whether the applicant was born on September 14, 1954, as she claims when she identifies herself as [REDACTED], or was born on September 14, 1950, as she claims when she identifies herself as [REDACTED], she appears to have been over 18 years old then, and likely when she committed her crime as well. If she wishes to contest that finding, that may be accomplished on motion.

The record in this matter suggests that the applicant was over 18 years of age when she committed the fraud crime shown above. At the time of its commission the maximum penalty for her fraud conviction was 20 years, and she was sentenced to more than one year of imprisonment for the crime, although imposition was suspended. She thus does not meet the requirements for an exception as set forth in section 212(a)(2)(A)(ii) of the Act.

The AAO find that because she was convicted of a crime involving moral turpitude when she was over 18 years old and does not qualify for the single petty offense exception, the applicant is inadmissible pursuant to Section 212(a)(2)(A).

Whether the applicant's conviction for her violation of Title 18, Section 1001 is also a crime involving moral turpitude rendering her inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act is not clear from the language of the statute. Because the applicant has already been found inadmissible under that section, however, the AAO need not engage in an analysis of that issue.

The record contains bases of inadmissibility that were not mentioned in the decision of denial.

² The applicant was paroled into the United States until May 9, 2002. Her entry, which was, obviously, prior to that date, was also on May 9. On the I-94 issued to her, the year appears to be 2000, but is not clear.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

The Form I-130 filed in this matter stated the applicant's name as [REDACTED] and stated that she had previously used the family names [REDACTED] and [REDACTED]. That form did not mention that the applicant had applied to Circuit Court of Cook County, Illinois for a name change, from [REDACTED] to [REDACTED], which request was granted on August 2, 1982. Although a material misrepresentation appears to have been made to avoid inadmissibility based on the applicant's criminal convictions, described above, the AAO notes that the applicant did not sign that Form I-130, and that it was signed, instead, by the applicant's husband. The AAO will not find inadmissibility on the basis of that material misrepresentation, as it cannot reliably be attributed to the applicant.

However, the record shows that the applicant entered the United States on November 24, 1975 using the passport of [REDACTED] a Liberian citizen born September 14, 1954. The record contains two Forms G-325A. The applicant signed one of those forms on March 26, 1997. The other is more recent, but undated. On both, she stated that she was born the daughter of [REDACTED] or [REDACTED] and [REDACTED] or [REDACTED] or [REDACTED], both of Lagos, Nigeria. The Form I-130 in this matter states that the applicant's maiden name [REDACTED]. The applicant further submitted a birth certificate showing that she was born in Ebute Metta, a suburb of Lagos, in Nigeria. Although the applicant's name on that form is only partly legible, it confirms that she was born with the first name [REDACTED] and the middle name [REDACTED], and that her father's first name was [REDACTED]. Although her father's first name is also imperfectly legible, it appears to be [REDACTED].

Although the record contains a judgment of the Circuit Court of Cook County, Illinois changing her name from [REDACTED] to [REDACTED], the record shows that the applicant was born [REDACTED] and that, on November 24, 1975 the applicant entered the United States on a passport that was not issued to her, but was issued to [REDACTED] a citizen of Liberia born in Monrovia.

The AAO finds that the applicant's submission of that passport in seeking to enter the United States, and her entry into the United States as a result of her misrepresentation that it was her passport, constituted misrepresentation and fraud as contemplated in section 212(a)(6)(C)(i) of the Act, and rendered her inadmissible pursuant to that subsection.

The balance of this decision will pertain to whether waiver of the applicant's inadmissibility pursuant to sections 212(a)(2)(A)(i)(I) and 212(a)(6)(C)(i) of the Act is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

³ In various documents in the record, the name is variously spelled [REDACTED] and [REDACTED].

Waiver of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is available under section 212(h) of the Act. Waiver of inadmissibility under section 212(a)(6)(C)(i) of the Act is available under section (i)(1) of the Act.

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

The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraph (A)(i)(I)

(1)(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

Section 212(i)(1) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien

A waiver of inadmissibility under section 212(h) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse, parent, son, or daughter of the applicant. A waiver of inadmissibility under section 212(i)(1) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant.

In order to qualify for consideration of a waiver of inadmissibility as a matter of discretion, the applicant must first show that she is eligible pursuant to the standards of both section 212(i)(1) and section 212(h) of the Act. Initially, the AAO will address the applicant's eligibility for consideration for a waiver pursuant to the somewhat higher threshold of section 212(i)(1) of the Act.

Under the more stringent standard of section 212(i)(1) of the Act, hardship to the applicant's children is not directly relevant to whether waiver of inadmissibility is available. Only hardship to the applicant's husband will be considered in addressing eligibility pursuant to section 212(a)(1) of the Act, because in this case he is the only qualifying relative under that section. If extreme

hardship to a qualifying relative is established, the AAO then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

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).

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).

The record contains a letter, dated June 21, 1983, from an acquaintance of the applicant. That letter is essentially a character reference, and contains no evidence pertinent to hardship that denial of the waiver application would cause to the applicant’s husband. That letter will not be further addressed.

The record contains a letter, notarized May 8, 1999, from the applicant’s husband. It states that he and the applicant support each other financially, emotionally, and psychologically, and that if she is obliged to depart he will miss her and suffer financial hardship. The record contains a letter, notarized February 24, 2005, also from the applicant’s husband. In it, he reiterated the points made in his previous letter. The record contains a copy of the applicant’s husband’s birth certificate, which shows that he was born on August 7, 1930. The AAO notes that the applicant’s husband, if he is still living,⁴ is 79 years old.

The record contains a letter, dated May 5, 1999, from the applicant’s younger son, [REDACTED]. [REDACTED] stated that his mother is helping him pay his tuition, and makes him comfortable, although he is

⁴ The Form I-130 filed by the applicant’s husband was already approved when the applicant’s son filed a second Form I-130 on March 30, 2008. This suggests, but does not demonstrate, that the applicant’s husband is dead.

away at school, and helps him maintain focus. He stated that if his mother left the United States he would be obliged to leave school, but did not elaborate on that statement.

The record contains a letter, dated May 10, 1999, from the applicant's daughter [REDACTED]. [REDACTED] stated that if her mother is obliged to leave the United States she will be emotionally and psychologically disturbed because she has always lived with her mother. She further stated that her education would be affected because her mother paid for some school materials and tutored her.

The record contains a letter, dated May 10, 1999, from the applicant's older son, [REDACTED]. [REDACTED] stated that his mother supports him and his siblings and pays household expenses. He further stated that he will miss the applicant and be disturbed psychologically because the applicant helps him with his tuition and tutors him.

The record contains three letters, one from each of the applicant's children dated February 20, 2005.

The letter from [REDACTED] states that he has three children whom the applicant cares for while he is at work and school. It further states that he would miss his mother if she were obliged to leave the United States.

The letter from [REDACTED] states that he is currently unemployed and that the applicant is financially supporting him. He stated that the applicant also supports him emotionally. And that it would be a very depressing time for family members if she were obliged to leave.

The letter from [REDACTED] states that she is also unemployed, that the applicant supports her, and that without the applicant she would be homeless. She stated that without the applicant present in the United States she would require longer to complete her education. She further stated that the applicant motivates her and she would be emotionally disturbed if the applicant left the United States.

In a brief filed in support of the appeal, counsel reiterated many of the points made in the letters from the applicant's husband and children.

Counsel also stated that the applicant's husband is infirm, and that the applicant's absence would cause him more than the typical amount of hardship, given his age and condition. The record contains evidence pertinent to the applicant's husband's age, but not his condition. The assertions of counsel are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Unsupported assertions of counsel are, therefore, insufficient to sustain the burden of proof.

Counsel stated that the applicant's daughter, Fatimoh, "is struggling with long(-)term emotional and psychological problems, but submitted no evidence in support of that assertion. Counsel's assertion pertinent to the applicant's daughter's condition is not supported by any evidence and , consistent with *INS v. Phinpathya*, *supra*, and *Matter of Ramirez-Sanchez*, *supra*, will be accorded

no weight.

Counsel further stated that conditions in Nigeria are poor, and that for the applicant to support herself in Nigeria would therefore, at her age, constitute a tremendous burden, but provided no relevant evidence. Counsel stated, for instance, that poverty is high in rural areas, with 74 percent of the population unable to meet basic needs, and that in urban centers, the incidence of poverty is approximately 60 percent, but did not reveal the provenance of those statistics. Again, counsel's assertions are not evidence, nor are they a substitute for evidence. Consistent with *Phinpathya*, *supra*, and *Ramirez-Sanchez*, *supra*, they will be accorded no evidentiary weight.

Further, counsel also made no attempt to demonstrate that the hardships that he asserted the applicant's children would suffer would occasion any hardship to the applicant's husband. The AAO reiterates that, pursuant to the standard in section 212(i)(1) of the Act, hardship to the applicant's children is not directly relevant to the approvability of the waiver application.

Counsel also stated that the applicant hardly knows anyone in Nigeria anymore, and that "most of her family there is either deceased or dissipated." [sic] Counsel provided no evidence that the applicant has no friends or family, or almost no friends or family, remaining in Nigeria, or that her friends and family there are somehow unavailable to help her. Again, the record contains no evidence in support of counsel's assertions and they will be accorded no weight. *See Phinpathya*, and *Ramirez-Sanchez*.

Having made the various arguments and assertions described above, counsel concluded that the evidence is, therefore, sufficient to show that the failure to approve the instant waiver application will cause extreme hardship to the applicant's husband.

The applicant's children have stated that they will suffer financially if the applicant is obliged to go to Nigeria. The record contains the joint 1998, 1999, and 2000 tax returns of the applicant and her husband, but no more recent returns and no other financial documents. In addition to containing no current evidence pertinent to the applicant's income, the record does not contain any evidence pertinent to the applicant's monthly expenses. The only evidence pertinent to her children's income is that two of them stated, on February 20, 2005, that they were unemployed and seeking work, and one conclusorily stated that she would be homeless but for that support. Although they stated that they were dependent on the applicant, they did not provide any reason that they could not depend on any other friend or family member, such as their brother, or provide any reason why, over the long-term, they could not be self-supporting.

The evidence does not show that, in the event of the applicant's removal, her children would suffer financial hardship which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship. Further, counsel drew no connection between financial hardship that the applicant's children would suffer and hardship that the applicant's husband, the only qualifying relative pursuant to the standards of section 212(i)(1) of the Act, would suffer.

Two of the applicant's children stated that their mother pays their tuition, or some portion of it, and tutors them in their schoolwork. They stated that, therefore, if the applicant's were obliged to

leave the United States they would be forced to cease, postpone, or prolong their educations. They did not provide any evidence to support their implicit assertions that they attend school, and did not address whether, if they attend school, financial aid and tutoring are available to them. The evidence does not demonstrate that, if the applicant is obliged to leave the United States, her children will suffer educational hardship which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

One of the applicant's children indicated that he has three children whom the applicant cares for while he works and attends school. He did not address whether another family member might care for them in his absence, or whether they might be able to go to daycare. The assertion that the applicant provides child care does not demonstrate that her absence and resultant inability to perform that service would result in hardship which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

The applicant's children also asserted that they will suffer psychologically and emotionally if their mother is removed from the United States, but provided no evidence from mental health professionals to show that they would be subject to greater hardship from those factors than one would expect in a typical case. The evidence does not show that, in the event of the applicant's removal, her children would suffer psychological or emotional hardship which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship. Further, counsel drew no connection between hardship that they might suffer and hardship that the applicant's husband, the only qualifying relative pursuant to the standards of section 212(i)(1) of the Act, would suffer.

Further still, birth certificates⁵ in the record show that the applicant's son [REDACTED] was born on May 11, 1978, her son [REDACTED] was born on February 15, 1980, and her daughter [REDACTED] was born on May 19, 1982. At the time of this writing, they are 31, 29, and 27 years old, and their dependence on their mother may have diminished.

The 1998, 1999, and 2000 tax returns show that the applicant's husband had little or no income during those years. The record contains no evidence pertinent to more recent years. Further, the record contains no evidence pertinent to his savings or his eligibility for social security payments or public assistance. Further still, the evidence in the record does not demonstrate that, in the event of the applicant's departure, the applicant's husband will be unable to be accommodated elsewhere, by friends or other family, for instance. The evidence in the record does not demonstrate that, if the applicant is removed to Nigeria and her husband remains in the United States, that he will suffer financial hardship which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

The applicant's husband's own two letters are the only evidence in the record to show that the applicant's husband would suffer psychologically and emotionally from the applicant's departure. In them, he stated that he loves her and that if she leaves he will miss her. He also stated, without

⁵ The applicant's name was altered on each of her children's birth certificates, and her age at the time of their births was altered on two of them. The record contains no indication of who altered those birth certificates or why. The AAO will draw no conclusion from those alterations.

elaboration, that he and the applicant support each other emotionally and psychologically. Those statements are not supported by any evidence from mental health professionals. Those abstract statements are insufficient to show that, if the applicant departs, her husband will suffer psychological and emotional hardship which, when combined with the other hardship factors in this matter, will rise to the level of extreme hardship.

Similarly, counsel provided no evidence from medical professionals to support his assertion that the applicant's husband's medical condition is poor. The only other evidence in the record that might support that assertion is the applicant's husband's birth certificate, which shows that he was born on August 7, 1930. The applicant's husband's age, however, absent any other evidence, is insufficient to show that, if the waiver application is not approved and the applicant is obliged to leave the United States, her husband will suffer medical hardship which, when considered together with the other hardship factors in this matter, will rise to the level of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant is refused admission and her husband remains in the United States. Rather, the record suggests that, in that event, he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

Another scenario must be considered in this case. The applicant is also obliged to show that denial of the waiver application would cause her husband to suffer extreme hardship if she were removed to Nigeria and he joined her there. Although counsel stated that conditions in Nigeria are poor, he provided no evidence of that assertion and no argument to show that, because of those alleged poor conditions or for any other reason, moving to Nigeria would result in hardship to the applicant's husband. The evidence in the record does not show that, if the applicant were removed to Nigeria and her husband accompanied her there to live, he would suffer extreme hardship.

The record suggests that the applicant has loving and devoted family members who are extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor 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 affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or 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 made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than 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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship.

The U.S. Supreme Court 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.

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(i)(1), 8 U.S.C. § 1186(i)(1) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits waiver as a matter of discretion.

Further, because the applicant is ineligible for waiver of ineligibility pursuant to section 212(i)(1) of the Act, no purpose would be served by a painstaking analysis of her eligibility for waiver pursuant to section 212(h) of the Act.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.