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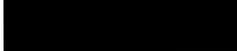
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CHICAGO, ILLINOIS

Date:

FEB 02 2009

IN RE:

Applicant:



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:



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).

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The applicant, [REDACTED], 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 seeking admission into the United States by fraud or willful misrepresentation.

The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so as to remain with his U.S. citizen spouse in the United States. The district director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated October 10, 2005. The applicant filed a timely appeal.

On appeal, counsel states that the applicant's spouse conveys that if the waiver application were denied her income will fall below the poverty level, she will have to pay for child care, she will lose the consortium of her husband, her child will be without a father figure, they would be without medical insurance, and she will be unable to complete her college education. Counsel states that *Matter of Chumpitazi*, 16 I&N Dec. 629 (BIA 1978), is not on point. He states that the district director did not apply the extreme hardship standard or consider all of the hardship factors in his decision. Counsel states that in *Matter of Mansour*, 11 I&N Dec. 305, the Board of Immigration Appeals (BIA) found "exceptional" hardship to a U.S. citizen spouse, even though the denial of the waiver would have resulted in only a two-year separation. Counsel states that here a waiver denial would result in a permanent bar to the United States, destroying the applicant's marriage or resulting in a de facto exile of his spouse if she joins him in Nigeria.

The AAO will first address the finding of inadmissibility.

The applicant was found inadmissible under section 212(a)(6)(C) of the Act, which 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 chapter is inadmissible.

The record reflects that [REDACTED] admitted to procuring admission to the United States on July 5, 1996, by presenting to an immigration inspector in New York a Nigerian passport that contained a non-immigrant visa in the name of [REDACTED]. Additionally, in a written statement the applicant conveyed that he obtained the Nigerian passport by giving someone named [REDACTED] \$2,000, and that he obtained the B-1/B-2 nonimmigrant visa by presenting that passport to the U.S.

Embassy in Nigeria. In light of his misrepresentations, is inadmissible under section 212(a)(6)(C)(i) of the Act.

A waiver is available for inadmissibility under section 212(a)(6)(C) of the Act, which the AAO will now address. Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 Attorney General 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 waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child are not a consideration under section 212(i) of the Act, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's U.S. citizen spouse. Once extreme hardship is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). *Matter of Cervantes-Gonzalez* lists the factors considered relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors, which relate to the applicant's qualifying relative, 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. *Id.* at 565-566.

The factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). The entire range of factors concerning hardship must be considered in their totality, and then the trier of fact must “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Submitted in support of the waiver application are an affidavit by the applicant's spouse, birth certificates, a health insurance card, medical records of the applicant's wife's pregnancy, a referral to a specialist regarding the applicant's spouse's thyroid, and a marriage certificate.

The content of the applicant's wife's affidavit was described, in general, by counsel on appeal. Additionally, the affidavit states that although the applicant is not the biological father of his spouse's child, he is the only figure father the child has known, and that the applicant's spouse receives no child support from the child's biological father. It states that the applicant's wife provides 20 percent of the family's income by working in the morning, and that the applicant has two evening jobs, contributing 80 percent of the family's income, and that their work schedules allow them to provide their own child care. The affidavit conveys that this is the second marriage for the applicant's wife, that she has a rare thyroid condition that has not been fully diagnosed or treated, that she had a miscarriage in 2003, and that she completed one year of college and intends to complete her education.

Extreme hardship to the applicant's spouse must be established in the event that she remains in the United States without the applicant, and alternatively, if she joins him to live in Nigeria. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The applicant's spouse states that the applicant is the primary source of the family's income. However, the record contains no documentation such as a W-2 Form, income tax records, or wage statements of the applicant's or his spouse's income. Nor did the applicant provide a complete list of his family's household expenses and corroborating documentation of those expenses. In the absence of such evidence, the AAO cannot make a determination as to whether the applicant's spouse is unable to meet household expenses without her husband's financial contribution. 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 record shows that the applicant's wife was referred to a specialist for a thyroid problem. The applicant's wife has stated that she relies upon her husband for health insurance. The medical card in the record does not indicate that the applicant's wife is provided insurance through her husband's employer. The applicant's wife has not explained why she would experience extreme hardship if she had a problem with her thyroid and remained in the United States without her husband.

The applicant's spouse expresses concern about separation from the applicant and the impact of his separation on their child. She states that her miscarriage brought her closer to her husband, who provides her with psychological and emotional support.

Family separation must be considered in determining hardship. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) ("the most important single hardship factor may be the separation of the alien from family living in the United States").

However, courts have found that family separation does not conclusively establish extreme hardship. *See, e.g., Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (separation of the applicant from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission”) (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (finding separation of respondent from his lawful permanent resident wife and two U.S. citizen children is not extreme hardship); *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985) (deportation is not without personal distress and emotional hurt).

After a careful consideration of the record, the AAO finds that the situation of the applicant's spouse, if she remains in the United States without her husband, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship that will be endured by the applicant's spouse is unusual or beyond that which is normally to be expected upon removal. *See*

supra.

Counsel asserts that extreme hardship should be found here because exceptional hardship was found in *Matter of Mansour*, where the U.S. citizen spouse had experienced a miscarriage, and would have experienced a major economic adjustment in Egypt and cultural and religious differences there; and experienced the psychological stress of the possibility that the Egyptian government would not allow her spouse to return to the United States after two years, and the mental anguish of separation from her spouse.

Matter of Mansour involves a waiver under section 212(e) of the Act, which is used to waive the 2-year foreign-residence requirement and requires exceptional rather than extreme hardship, a lower standard. A section 212(e) waiver and a section 212(i) waiver of inadmissibility for fraud or willful misrepresentation are separate and distinct applications for relief under the Act, and the case law applicable to a section 212(e) waiver is not appropriate in the context of a section 212(i) waiver.

Other than counsel's stating that if the applicant's wife joined him in Nigeria that it would result in her de facto exile from the United States, there is no claim made as to the specific hardship that the applicant's wife would experience if she were to accompany her husband to Nigeria.

Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to the applicant's spouse if she were to remain in the United States without her husband, and alternative, if she were to join him in Nigeria. Thus, extreme hardship to a qualifying family member for purposes of relief under 212(i) the Act, 8 U.S.C. § 1182(i), has not been established.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed. The application will be denied.

ORDER: The appeal is dismissed. The application is denied.