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U.S. Department of Homeland Security
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H2

[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO, IL

Date: JAN 16 2009

IN RE:

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 cursive script, appearing to read "John F. Grissom".

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 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 procured admission into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen. He 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 his spouse and their U.S. citizen child.

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*, November 7, 2005.

On appeal, counsel contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding that the applicant had failed to meet the burden of establishing extreme hardship to her qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant and his spouse; an employment letter for the applicant's spouse; a statement from the applicant's mother-in-law; medical records and prescriptions for the applicant's spouse; published reports on lupus and Nigerian country conditions; a statement from a friend of the applicant's; a scholarship award letter for the applicant's spouse; a letter of resignation for the applicant's spouse; an academic transcript for the applicant's spouse; a tax statement for the applicant and his spouse; a lease agreement; utility and phone bills; and bank statements. 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 admitted at his interview to adjust status to lawful permanent resident that in 1998 he presented a false Dutch passport to gain admission into the United States. *Form I-485, Application to Register Permanent Resident or Adjust Status*. The applicant is, therefore, inadmissible under Section 212(a)(6)(C)(i) of the Act.

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. The plain language of the statute indicates that hardship that the applicant's child or that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. Hardship to the applicant's child will be considered only to the extent that it affects a qualifying relative. 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 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 whether she resides in Nigeria or the United States, as she 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 the 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. The applicant's spouse was born and raised in the United States. *See birth certificate; Form G-325A, Biographic Information sheet, for the applicant's spouse*. The applicant's spouse's entire family is in the United States, she has never traveled outside of the United States, and her heritage is not Nigerian. *Attorney's brief*. The applicant's spouse has been diagnosed with Lupus. *Medical records, Test Request Form, University of Illinois Medical Center; Request for Consultation*, dated July 6, 2004. According to a published report, Lupus causes the immune system to attack the body's own cells. *Report Confirms Lupus is a Significant Health Issue for Women, The Lupus Foundation of America*. The applicant's spouse takes medication for infection, pain and depression. *Medical prescriptions for the applicant's spouse*. As a result of this

illness, the applicant's spouse has not been able to work like she used to, and sometimes the side effects of the medication make it difficult for her to care for her son because she is in constant pain. *Statement from the applicant's spouse*, dated January 3, 2006. She states that, in Nigeria, it will be difficult for her to obtain her prescriptions and seek medical attention when she needs it. *Id.* She notes that Nigeria does not regulate the sale of drug prescriptions. *Id.* The assertions of the applicant's spouse are documented by an article that notes that the Pharmaceutical Society of Nigeria has reported that at least 70 percent of the drugs in circulation in Nigeria are fake. *Attorney's brief; "India agrees to help Nigeria tackle the import of fake drugs," News extra, British Medical Journal, <http://bmj.bmjournals.com/cgi/content/full/326/7401/1234-d>*. Additionally the AAO notes that as of December 2, 2008, the United States Department of State extended its travel warning for Nigeria, particularly for the Niger Delta area (near Anambra state). *Nigeria, United States Department of State, http://travel.state.gov/travel/cis_pa_tw/tw/tw_928.html*, dated December 2, 2008. The Department of State also notes that crime is particularly "acute" in Lagos. *Id.* The applicant's spouse states that she and the applicant would live in Anambra State. *Statement from the applicant's spouse*, dated January 9, 2003. When looking at the aforementioned factors, particularly the applicant's spouse's lack of family and cultural ties to Nigeria, her health condition, and the lack of effective medical treatment in Nigeria, as documented by published reports, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Nigeria.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse has been diagnosed with Lupus and is receiving medication. *Medical records, Test Request Form, University of Illinois Medical Center; Medical prescriptions for the applicant's spouse*. She notes that, as a result of this illness, she has not been able to work like she used to, and sometimes the side effects of the medication make it difficult for her to care for her son because she is in constant pain. *Statement from the applicant's spouse*, dated January 3, 2006. The applicant's spouse takes medication for infection, pain and depression. *Medical prescriptions for the applicant's spouse*. She notes that if she stays in the United States, she will be left with huge responsibilities of taking care of her son by herself, paying for child care, paying for two car notes, and rent. *Id.; See utility bills, lease agreement, and phone bills*. When looking at aforementioned factors, specifically the applicant's spouse's diagnosis of lupus, her need to take medication for depression, and her child care responsibilities, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if she were to reside in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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).

The adverse factors in the present case are the applicant's prior misrepresentation for which he now seeks a waiver, and his periods of extended unlawful residence in the United States along with unauthorized employment.

The favorable and mitigating factors are the applicant's United States citizen spouse and child, the extreme hardship to his spouse and the absence of a criminal record.

The AAO finds that, although the immigration violations committed by the applicant were serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.