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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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JAN 22 2009

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

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:

SELF-REPRESENTED

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 Director, California Service Center, 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act 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 remain in the United States and reside with his U.S. citizen wife and children.

The director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated March 24, 2006.

On appeal, the applicant contends that his wife will suffer hardship if he is prohibited from remaining in the United States. *Statement from the Applicant on Appeal*, dated April 20, 2006. The applicant asserts that U.S. Citizenship and Immigration Services (USCIS) approved a waiver in a separate but similar matter. *Id.* at 1. The applicant presents evidence that he warrants a favorable exercise of discretion. *Id.* 1-4.

The record contains statements from the applicant; tax and business records for the applicant and his wife; documentation relating to the applicant's and his wife's real estate; a statement from the applicant's wife; statements from the applicant's stepchildren; a statement from the applicant's brother; a letter from the applicant's church; birth records for the applicant, the applicant's wife, and the applicants three children; general character references for the applicant; documentation of a scholarship the applicant received for school; documentation of conditions in Nigeria; a copy of the applicant's marriage certificate; copies of bills for the applicant and his wife; a copy of the applicant's passport; a social security benefit statement for the applicant's wife, and; documentation in connection with the applicant's entry into the United States. 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 on or about December 25, 2001 the applicant entered the United States using a passport that belonged to his brother, yet with the applicant's photograph substituted for the original. Thus, the applicant attempted to enter the United States by fraud, and made a willful misrepresentation of a material fact (his true identity) in order to procure an immigration benefit under the Act. Accordingly, the applicant 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). The applicant does not contest his inadmissibility on appeal.

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. Hardship the applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant's wife. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau 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 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.

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).

On appeal, the applicant contends that his wife will suffer hardship if he is prohibited from remaining in the United States. *Statement from the Applicant on Appeal* at 1. The applicant states that his wife will experience significant economic hardship should he depart the United States, as he is the provider for his family. *Id.* at 2-4. The applicant provided documentation to show that he operates a business as a contractor for Federal Express. His wife submitted a statement, dated October 15, 2003, that indicates she did not "file taxes for the past three years." *Tax Statement from Applicant's Wife*, dated October 15, 2003. The applicant states that his wife has a disability.

Statement from the Applicant on Appeal at 4. The record contains a Form SSA-1099 that reflects that the applicant's wife received \$5,580 as benefits from the Social Security Administration in 2002. The applicant explains that it would be difficult for him to secure employment in Nigeria, suggesting that he would be unable to continue to support his wife and children. *Statement from the Applicant on Appeal* at 3.

The applicant contends that his family, including his wife, will experience significant emotional hardship should they be separated. *Id.* at 2. He noted that his family has plans to expand their business activities, which would not be possible from Nigeria. *Id.*

The applicant submitted documentation of conditions in Nigeria to support his assertion that the country will present serious hardship for him and his wife should they move there, including political unrest, kidnapping of foreigners, religious killings, a poor educational system, a lack of health care infrastructure, and a lack of respect for the rule of law. *Id.* at 3.

The applicant stated that his stepson has attention deficit hyperactivity disorder ("ADHD"), and that he has needs that cannot be met in Nigeria. *Id.* at 4.

The applicant asserts that USCIS approved a waiver in a separate but similar matter. *Id.* at 1. He submitted a copy of the Board of Immigration Appeals decision in *In re Guang Li Fu*, 23 I&N Dec. 985 (BIA 2006), yet he did not discuss how the decision has a bearing on the present matter.

The applicant presents evidence that he warrants a favorable exercise of discretion. *Statement from the Applicant on Appeal* at 1-4.

In a separate statement the applicant indicated that he and his wife have five children, ages 16, 13, five, two, and one, and that his wife would have difficulty coping should the present waiver application be denied. *Statement from Applicant*, undated.

On December 15, 2008, the applicant supplemented the record with evidence that his stepson suffers from ADHD. The applicant further provided evidence that his three-year-old son was diagnosed with seizures and related ailments. The applicant explained that he and his wife had a third child on October 24, 2008, and he included a birth certificate as evidence. The applicant submitted birth certificates to show that he and his wife presently have three children, ages three months, three, and six.

The applicant's wife stated that the applicant is a good husband and father. *Statement from Applicant's Wife*, dated April 20, 2006. She indicated that she worked from age 16 until her late 20s when she was disabled. *Id.* at 1. She provided that she and the applicant have two children together, ages 11 months and three years. *Id.* at 2. She expressed that their children would experience hardship should the applicant be compelled to depart the United States. *Id.* She indicated that conditions in Nigeria are poor, and that while she has health insurance in the United States, people in Nigeria do not. *Id.*

Upon review, the applicant has established that a qualifying relative will experience extreme hardship should the present waiver application be denied. The applicant contends that his wife will suffer serious economic hardship should he be compelled to depart the United States and she remain. The applicant contends that his wife is disabled, and his wife indicated that she has not worked since her late 20s. It is noted that the applicant has not submitted any evidence to show that his wife currently has a disability that prohibits her from engaging in employment. While the applicant submitted a benefits statement for his wife from 2002, he has not provided a description of his wife's disability, or any evaluation from a medical professional that supports that she is unable to work. Nor has the applicant submitted any evidence that his wife received social security benefits after 2002. Yet, the applicant's and his wife's 2005 federal income tax filing reflects that the applicant's wife did not work, and they earned a total of \$11,798 for the year comprised of the applicant's business profits and wages. Thus, the record supports that the applicant's wife presently is not engaged in employment.

The applicant and his wife have three young children, ages three months, three years, and six years. In their 2005 federal tax filing, the applicant and his wife claimed two other children, a "son" and "daughter," as dependents. As the applicant references his two stepchildren, it is presumed that these two additional children are the biological children of the applicant's wife. However, the applicant has not submitted birth certificates for these two stepchildren. One of these children, [REDACTED], is identified as a child with ADHD by a committee of school administrators. Such evidence from a school, dated November 2008, suggests that the this child remains a minor in need of parental care. While the applicant has not presented a birth certificate or other evidence to show the age or parental needs of his alleged stepdaughter, [REDACTED], the record contains sufficient documentation to show that the applicant and his wife have significant childcare needs, including four or five children, some with special needs and health concerns. Should the applicant's wife remain in the United States alone to care for these children, it is evident that she would face significant emotional, physical, and economic challenges.

The applicant indicated that he and his wife have future business plans, and that his departure to Nigeria would disrupt them, contributing to his wife's economic hardship. Yet, the applicant has not shown that he and his wife have an existing investment related to their goal to acquire a food franchise, thus his stated plans are speculation and do not serve as a basis for economic hardship to his wife.

The applicant's wife noted that their children would experience hardship if the present waiver application is denied. Hardship to an applicant's child is not a direct concern in waiver proceedings under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's children, it is reasonable to expect that the children's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative.

The AAO recognizes that the applicant's wife will endure significant emotional consequences as a result of separation from the applicant should she remain in the United States. The AAO further acknowledges that the applicant's wife's hardship will be compounded due to sharing in her children's loss of the applicant's daily presence.

Based on the foregoing, the applicant has shown that his wife will experience extreme hardship should she remain in the United States without him.

The applicant presented evidence that his wife would experience extreme hardship should she relocate to Nigeria to maintain family unity. The AAO acknowledges that the applicant's wife would face significant challenges in Nigeria, particularly considering that the record suggests that she has not resided outside the United States in the past. The record shows that the applicant's wife would experience economic difficulty in adjusting to life in Nigeria, and she would be faced with the challenge of caring for at least three young children in an unfamiliar culture. The applicant has submitted documentation to support that conditions for his wife in Nigeria would be harsh compared to the United States, including less access to health care and other services, fewer employment opportunities, and a risk of crime and social unrest. Considering all factors of hardship in aggregate, the applicant has shown by a preponderance of the evidence that his wife would experience extreme hardship should she relocate to Nigeria.

Based on the foregoing, the applicant has shown by a preponderance of the evidence that denial of the present waiver application "would result in extreme hardship" to his U.S. citizen wife, as required by section 212(i) of the Act.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12.

The negative factors in this case consist of the following:

The applicant entered the United States by fraud and misrepresenting his identity, in violation of U.S. immigration law and has periods of unauthorized presence and employment.

The positive factors in this case include:

The applicant has significant family ties to the United States, including his wife, three children, and one or two stepchildren; the applicant's wife would suffer extreme hardship if the applicant is compelled to depart the United States; the applicant operates a business in the United States and pays taxes, and; the applicant has not been convicted of any crimes.

While the AAO cannot condone the applicant's immigration violations, the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden that he merits approval of his application.

ORDER: The appeal is sustained.