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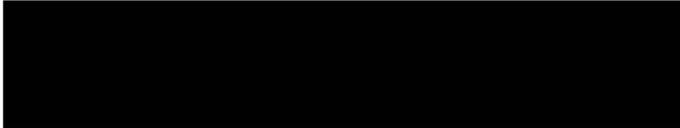
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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FILE: [REDACTED] Office: MIAMI, FL (TAMPA)

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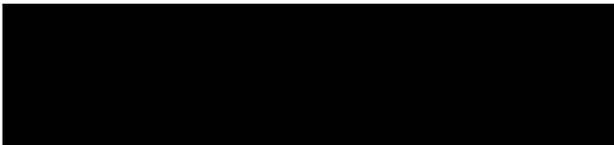
**JUL 16 2009**

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 PETITIONER:



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, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a thirty-four year-old 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 and children.

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 April 17, 2007.

On appeal, counsel states that Citizenship and Immigration Services (“USCIS”) abused its discretion in finding that the applicant had not entered the United States legally and was therefore ineligible to apply for adjustment of status because he had not been admitted or paroled. *Counsel’s Brief in Support of Appeal* at 3. Counsel further contends that because the applicant’s application for adjustment of status (Form I-485) was denied, the waiver application should not have been considered and is therefore moot. *Brief* at 4. Counsel states that the denial of the waiver application should be rescinded so the merits of the I-601 waiver can be adjudicated. *Id.*<sup>1</sup> Counsel additionally asserts that USCIS abused its discretion in denying the waiver application and failed to state the basis for its conclusion that extreme hardship had not been established. *Brief* at 5. Counsel states that the applicant’s wife and children would face extreme hardship if they relocated to Nigeria due to difficult political and social conditions and further asserts that USCIS should reevaluate the waiver application based on new evidence submitted with the appeal. *Brief* at 5-6. Documentation submitted with the waiver application and appeal includes the following: Letters from the applicant and his wife, a letter from the applicant’s son’s physician, a letter from a friend, 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:

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<sup>1</sup> The issue of whether the applicant was admitted to the United States relates to his Form I-485 Application to Register Permanent Resident or Adjust Status, which is not within the jurisdiction of the AAO. The AAO will, therefore, only address the issues directly related to his Form I-601 Application for Waiver of Ground of Inadmissibility.

- (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.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 thirty-four year-old native and citizen of Nigeria who has resided in the United States since November 5, 2002, when he was admitted under the visa waiver program after presenting a British passport issued to [REDACTED]. The

applicant married his wife, a thirty-eight year-old native of Cote d'Ivoire and citizen of the United States, on February 11, 2005. They reside in Tampa, Florida with their three children.

Counsel asserts that the applicant's wife would suffer extreme hardship if she relocated to Nigeria because of difficult political and social conditions, "which would make their lives unbearable." *Brief* at 5. Counsel further asserts that relocation there would cause extreme hardship to the entire family, especially their baby born in July 2007, and many areas of the country lack electricity, running water, and adequate health care. *Brief* at 6. In support of these assertions counsel submitted a letter from the applicant's wife and articles concerning conditions in Nigeria. The applicant's wife states that she came to the United States when she was twenty-six years old and appreciated having water and electricity because there was no water where she lived in Nigeria. *Declaration of* [REDACTED] [REDACTED] dated May 8, 2006 at 2. She states that it would be too dangerous for her children if they were to relocate to Nigeria with the applicant and further states,

They don't know what it would be like to live without running water and electricity at any given moment. Secondly, . . . I am afraid that their immune systems would not be able to tolerate the change. [REDACTED] has asthma and allergies and I don't believe he would be able to receive the level of medical care in Nigeria that he receives here. [REDACTED] suffers from eczema and also required medical attention that may not be available to him in Nigeria like it is here. *Declaration of* [REDACTED] at 4.

A letter from the applicant's sons' pediatrician states that their twelve year-old son suffers from asthma and allergic rhinitis and takes medications to control these illnesses, and their four year-old son suffers from eczema and takes an ointment for the condition. No other information was submitted concerning their medical conditions to explain the seriousness of the conditions or the prognosis for recovery. Although the emotional effects of a serious medical condition of a qualifying relative's child could be considered in assessing his claim of extreme hardship, the evidence in the present case does not establish that the applicant's sons are suffering from such conditions. The only evidence presented is a brief letter from the children's pediatrician that does not provide enough detail concerning the nature of the condition and the treatment necessary to establish that a significant, ongoing medical condition is present.

Counsel asserts that the applicant's wife would suffer extreme emotional and psychological hardship as a result of being separated from the applicant if the applicant relocated to Nigeria and she remained in the United States. In her declaration the applicant's wife states that without the applicants' financial support she would not be able to afford childcare for her children, including daycare for her younger children and after-school care for her older child. *Declaration of* [REDACTED] [REDACTED] at 4. She further states that she is able to earn \$13 per hour because she works evenings and the applicant takes care of the children and would earn less if she worked the day shift. *Id.* She states, "Even though I make more money than [REDACTED] does, I am able to do this only because I work two jobs and work evening and weekend shifts which pay more . . ." *Id.* She additionally states that she has no family in Florida to help her and cannot relocate to New Jersey where her mother and brother reside because her older son's pediatrician had recommended that they reside in a warmer climate due to her son's eczema. *Id.*

The applicant's wife asserts that she would be unable to pay household expenses, including the cost of childcare for her three sons, without the applicant's income and would earn less due to having to work a day shift in the applicant's absence. No evidence was submitted to document the cost of childcare for the applicant's sons or otherwise document the family's living expenses to support the assertion that the applicant's wife would be unable to support herself and her children if the applicant relocated to Nigeria. 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)). Further, even if the applicant's relocation to Nigeria would have a negative effect on his wife's financial situation, there is no indication that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of the applicant's removal. Having to support their children without the applicant's income and assistance therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's husband. See *INS v. Jong Ha Wang*, *supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The applicant's wife states that she and her children would be "heartbroken" if they were separated from the applicant and she cannot imagine life without him. *Declaration of* [REDACTED] at 5. She states that with the applicant for the first time in her life is she able to experience a real family since she grew up in a boarding school and was deprived of the family experience. *Id.* The applicant's wife states that she would suffer emotional hardship if the applicant were removed from the United States, but no evidence was submitted concerning her mental health or the potential psychological effects of such a separation. 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 he is removed from 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.