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U.S. Immigration and Citizenship Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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Services

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FILE:

Office: CHICAGO, ILLINOIS

Date:

**JUN 24 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.

A handwritten signature in black ink, 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 pursuant to 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). 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 August 23, 2006. The applicant submitted a timely appeal.

On appeal, counsel states that the submitted evidence establishes the extreme hardship factors in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999). He states that if the applicant's wife joins her husband in Nigeria she would be separated from her immediate family members in the United States, who are her lawful permanent resident mother and her U.S. citizen and lawful permanent resident sisters. Counsel conveys that the applicant's spouse would have to give up her permanent residency in the United States for which she has worked so hard, and any hope of becoming a U.S. citizen. He states that eight years ago the applicant's wife left behind a life of poverty in Nigeria, and is now a licensed physical therapist who has taken post-graduate courses in physical therapy at a university towards an advanced degree, and that she could not complete her education in Nigeria. Counsel states that it would be difficult for her to find suitable employment as a physical therapist in Nigeria, as shown in the study entitled "Skill, Professionalism, Self-Esteem and Immigration: The Case of Nigerian Physical Therapists." Counsel states that as shown in the study the average income of a physical therapist in Nigeria is \$2,000 annually. Counsel states that Nigeria lacks skilled medical personnel, as shown in the World Health Organization (WHO) report for 2002-2007, which concerns the applicant's spouse as her two children are not yet five years old. He states that the WHO conveys that Nigeria's life expectancy was 48.2 years old for females in 2000, which indicates the extreme hardship faced in living there, and that the CIA World Factbook conveys that 60 percent of the population in Nigeria lives below the poverty line, which is \$1 a day, and an August 24, 2006 Travel Warning by the U.S. Department of State Bureau of Consular Affairs indicates that it is dangerous to travel to Nigeria. Counsel refers to articles to show the difficulties the applicant's children would have in obtaining a decent education. Counsel further states that if the applicant's spouse remains in the United States without her husband's income she would not be able to continue her post-graduate studies, and may not be able to meet her household expenses or have health, disability, or life insurance benefits, all of which the applicant provides. Counsel refers to a letter by [REDACTED] a licensed clinical psychologist, to show that the applicant's wife has had post-partum depression and other emotional problems that have worsened because of her husband's immigration problems. Counsel indicates that the applicant's spouse may not receive adequate psychological counseling if she moved to Nigeria, and he refers to an article in the Journal of Mental Health Policy and Economics and the WHO report in support of this. Counsel states that the waiver application should be granted because the hardship factors, taken together, establish extreme hardship to the applicant's spouse if she were to join her husband in Nigeria, and alternatively, if she were to remain in the United States without him.

The AAO will first address the finding of inadmissibility.

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.

The record reflects that the applicant married his first spouse on March 15, 1997, and that she filed the Petition for Alien Relative (Form I-130) on his behalf on June 21, 1997. On October 30, 1997, they separated. However, in response to a Request for Evidence (RFE) dated December 7, 2000, the applicant submitted documents indicating that he and his spouse still had a marital relationship: a lease agreement dated July 1, 2000, stating that the applicant and his spouse were to occupy the leased apartment together, and a car loan dated June 7, 1997, in both of their names, and photographs of them as a couple. The record therefore reflects that the applicant claimed to be living with his former spouse as of January 5, 2001, the date when he submitted his response to the RFE, in order to pursue the Form I-130 petition, even though they were separated since October 30, 1997. Based on the documentation in the record, the district director was correct in finding the applicant inadmissible under section 212(a)(6)(C) of the Act for willfully misrepresenting a material fact, his relationship with his former spouse, in order to adjust his status in the United States.

Section 212(i) of the Act, which provides a waiver for fraud and material misrepresentation, states 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 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 the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and his two U.S. citizen children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's lawful permanent resident spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (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). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "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).

Extreme hardship to the applicant's spouse must be established in the event that she remains in the United States without him, and alternatively, if she joins the applicant 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 wife indicates in her affidavit dated September 21, 2006, that her husband's income is needed to meet their monthly financial obligations and that his employment provides the family's health benefits. The letter dated May 16, 2006 by Girling Health Care, Inc. indicates that the applicant's wife is a physical therapist with an annual income of \$72,000. The applicant's wife states that her monthly net income is \$4,600, and her husband's is \$1,700; the W-2 Form and income tax records for 2005 reflect her husband earned \$33,312. There are invoices in the record of the applicant's and his spouse's financial obligations for their home mortgage, car loan, water, telephone, electricity, gas, cable, health care, credit cards, home equity loan, and home and automobile insurance. As listed by the applicant's spouse, the AAO finds that the family's monthly obligations, including those without invoices in the record, total approximately \$5,768. Thus, the applicant's wife's monthly income of \$4,600 would not be sufficient to pay for all of the family's expenses.

The applicant's wife conveys in her affidavit dated September 21, 2006, that she has sought the help of a therapist for post-partum depression and stress. She states that her husband "has been her rock the last few years; being without him will be nothing short of devastating." The letter dated September 19, 2006, by [REDACTED] conveys that the applicant's spouse has symptoms of depression and anxiety. She states that the applicant's spouse "has a history of depression following the birth of her first child," and that her second pregnancy was emotionally difficult. The record shows the applicant's first child was born in 2004; her second child was born on August 14, 2006. [REDACTED] states that the possibility that the applicant may be required to return to Nigeria added to his wife's depression and anxiety, putting undue hardship on her and "quite possibly

exacerbating her depression, as she would need to work full time to support her children soon after giving birth, be without the love and support of her husband, and try to cope with depression all at once.” [REDACTED] states that the applicant’s wife “will be seen for weekly individual psychotherapy to assist her in coping with depression and anxiety to get through this difficult time.”

Courts have stated that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted).

The hardship presented in this case is principally emotional in nature and secondarily economic. Although the applicant’s wife’s salary comprises 80 percent of her family’s household income, the applicant has established that his financial contribution is needed to meet the family’s monthly financial obligations. Additionally, the applicant has established that his wife would experience extreme emotional hardship if they separated. [REDACTED] describes the applicant’s spouse as having a history of depression following the birth of her first child, and having an emotionally difficult second pregnancy. She indicates that the applicant’s wife’s depression and symptoms of anxiety increased upon considering the possibility of having to care for her children without her husband. In light of the evidence in the record, and in particular [REDACTED] letter, the AAO finds that the cumulative general emotional effect that family separation would have on the applicant’s wife, combined with the increased financial and familial burdens that his wife would face if her husband were removed from the United States, render the hardship in this case beyond that which is normally experienced in most cases of removal. Accordingly, the AAO finds that the applicant has established that his wife would suffer extreme hardship if his waiver of inadmissibility application were denied.

Counsel asserts that if the applicant’s wife joined her husband in Nigeria she would lose her lawful resident status, would be separated from her immediate family members, would live in poverty in a country where 60 percent of the population lives below the poverty line, would not be able to complete an advanced degree in physical therapy, would not find suitable employment in her field, would not have adequate healthcare for herself and her two children, would not be able to provide a decent education for her children, and may not have access to adequate psychological counseling. In addition, counsel provides documentation, a study, report, and articles, in support of his assertions about economic, social, and political conditions in Nigeria.

Based on the fact that the applicant’s spouse would lose her lawful residency status if she joined her husband in Nigeria, and coupled with the submitted evidence of country conditions in Nigeria, the applicant has established that the cumulative emotional and financial effect that living in Nigeria would have on his wife establishes that she would experience extreme hardship if she joined him to live in Nigeria.

The grant or denial of the above waiver does not depend only on the issue of the meaning of “extreme hardship.” Once extreme hardship is established, the Secretary then determines whether an

exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The favorable factors in this matter are the extreme hardship to the applicant's spouse and children, his employment as shown by income tax records, and the passage of eight years since his misrepresentation. The unfavorable factors in this matter are the applicant's misrepresentation of his relationship with his prior spouse in an attempt to adjust status, his overstay of his initial visa and periods of unauthorized presence. The AAO notes that the record does not indicate that the applicant has any criminal convictions.

While the AAO cannot emphasize enough the seriousness with which it regards the applicant's immigration violations, the AAO finds that the hardship imposed on the applicant's family as a result of his inadmissibility outweighs the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained. The waiver application is approved.