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U.S. Citizenship  
and Immigration  
Services



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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

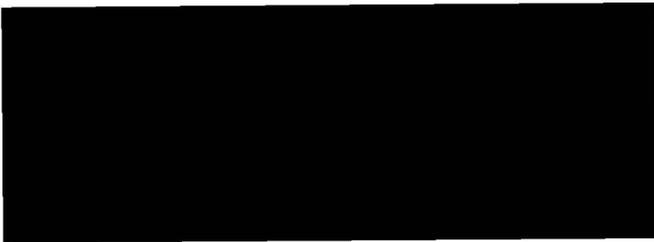
**MAR 06 2009**

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:



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.

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 with his U.S. citizen wife.

The service center 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 Service Center Director*, dated July 18, 2006.

On appeal, counsel for the applicant asserts that the applicant's wife will suffer hardship if the applicant is prohibited from remaining in the United States. Counsel asserts that U.S. Citizenship and Immigration Services (USCIS) erred in determining that the applicant had not established that his wife would suffer extreme hardship and failed to consider all elements of hardship to the applicant's wife in the aggregate. *Brief in Support of Appeal* at 1. Counsel states that USCIS erred in failing to give adequate weight to evidence and statements made by the applicant's wife concerning her medical condition and the level of pain she experiences. *Brief in Support of Appeal* at 1. Counsel additionally asserts that USCIS failed to consider the issue of family separation together with other factors that may result in extreme hardship to the applicant's wife, including the psychological and emotional effects of having to leave her parents, who suffer from various medical problems, and the financial impact of having to raise their daughter alone without the applicant's income. *Brief in Support of Appeal* at 2-3. Counsel also contends that USCIS failed to consider evidence concerning hardships the applicant's wife would suffer in Nigeria, including information on poor medical care and high crime levels. *Brief in Support of Appeal* at 2-3. In support of the appeal and waiver application counsel submitted the following documentation: Statements from the applicant and his wife, statements from the applicant's wife's parents, copies of medical records for the applicant's wife's parents, a letter from the applicant's doctor, medical records for the applicant's wife and daughter, letters from the applicant's church and organizations where he has volunteered, copies of death certificates for the applicant's parents, a copy of the applicant's daughter's birth certificate, a U.S. State Department Travel Warning for Nigeria, and copies of newspaper articles concerning conditions in Nigeria. 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.

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 alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; 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 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 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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[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." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant's wife would possibly remain in the United States if the applicant departs. Separation of family will therefore be carefully considered in the assessment of hardship factors in the present case.

The record reflects that the applicant is a thirty-eight year-old native and citizen of Nigeria who has resided in the United States since August 11, 1996, when he attempted to enter the United States at Atlanta, Georgia, by presenting a British passport under the name [REDACTED]. The applicant pleaded guilty to attempting to enter the United States by a willfully false and misleading misrepresentation and was sentenced to six months probation and a \$10 fine. 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 record further reflects that the applicant's wife, whom he married on April 6, 2001, is a thirty-eight year-old

native and citizen of the United States. They currently reside in Lawrenceville, Georgia with their five year-old daughter.

The applicant's wife states she will experience extreme emotional, physical, and financial hardship if the applicant is compelled to depart the United States and she remains in the United States. She states that both of her parents have serious health problems and she and the applicant have been traveling to Tallahassee, Florida regularly to help them with their medication, bills, cleaning, and "general well-being." She states: "On days when I cannot make it [REDACTED] goes over alone to help them out. I know I could not do this without support and help." *Undated declaration of [REDACTED]* She further states that she would suffer emotional hardship from being separated from the applicant, and that the effects of the separation on their daughter would cause her to suffer a lot of stress. She states: "Not only would she have to deal with separation from her dad, but she may even see me less because I may have to pick up a 2<sup>nd</sup> job to make ends meet." *Declaration of [REDACTED]*. She further states: "I know I would not be able to handle the stress of a three year-old child and have to work several jobs to make ends meet to support our family (including my husband who will be in a country that he has been away from in almost ten years with no financial means!)." *Id.*

Medical records submitted with the appeal indicate that the applicant's mother-in-law suffers from diabetes and hypertension, depression, and other conditions, and must take numerous medications. She was also diagnosed with kidney failure, though the records provide no detail about this condition or any treatment or medication prescribed. Medical records for the applicant's father-in-law indicate that he has a history of cardiac arrest with "severe bradycardia," has undergone quadruple bypass surgery, has a pacemaker, and suffers from hypertension and diabetes. The applicant's wife's mother states that she was the main source of support to her husband, who has had several heart attacks and is also diabetic, until she was diagnosed with diabetes, hypertension, and kidney failure in 2004. *See Letter from [REDACTED] dated August 26, 2006.* She states that the applicant and his wife have been their "main source of family support/help in the past several years." *Id.* She states that her other adult children are unable to provide this assistance because one is expecting her second child and suffers from an unspecified condition and the other has five children and is having a hard time making ends meet. *See letter from [REDACTED].* She states:

They have mostly spent the last 3 to 4 years driving back-and-forth to Florida to assist us in our care. [REDACTED] have been consistently coming to assist us with home cleaning, medication, paying bills, doing our shopping, laundry, grooming and other things that to be done. They typically alternate one after another to make the 5 hour trip bi-weekly to make this happen." *Id.*

A Rating Decision from the Department of Veterans Affairs for the applicant's father-in-law, a Vietnam War veteran, finds that he qualified for disability benefits related to his coronary artery disease and related surgery and the implantation of a pacemaker, and states:

Due to your current diagnoses of coronary artery disease, diabetes mellitus type II . . . you require the assistance of another person with your activities of daily living and to care and protect you from the hazards and dangers of daily living. *Department of Veteran Affairs, Rating Decision for [REDACTED] dated June 5, 2006.*

It appears that the applicant and his wife are both involved in the care of her parents, who need much assistance due to their serious medical conditions. The documentation submitted indicates that both the applicant and his wife provide this care, and the applicant makes the trip to care for his wife's parents on his own when she is not able. If the applicant were removed from the United States, it appears that his wife would have difficulty providing this assistance to her parents, and her siblings are not in a position to provide the assistance.

The applicant's wife expressed that she would experience significant hardship if she relocates to Nigeria with the applicant, including separation from her immediate family, loss of employment and related benefits, loss of medical insurance, financial uncertainty, and a risk of harm due to conditions in Nigeria and her status as a United States citizen. Documentation submitted with the waiver application, including a U.S. State Department Travel Advisory, indicates that there is a high level of violent crime in Nigeria.

Upon a complete review of the evidence on the record, the AAO finds that the applicant has established that his wife will experience extreme hardship if he is prohibited from remaining in the United States. Although her parents are not qualifying relatives, the emotional effects on the applicant's wife of any hardship they would experience as a result of the applicant's removal is a relevant factor in assessing extreme hardship. This emotional hardship, combined with the emotional hardship caused by being separated from the applicant and the financial hardship of having to raise their daughter alone and make alternative arrangements for childcare, would cumulatively amount to extreme hardship to the applicant's wife if he were removed from the United States and she remained. This finding is largely based on the fact that her parents are in poor health and she and the applicant provide them with needed assistance, and the inability to continue to regularly provide this help would cause her emotional distress. Further, as noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998).

Relocating to Nigeria would pose numerous hardships for the applicant's wife, including separation from her family members, who are all in the United States; having to adjust to a new culture and language after spending her entire life in the United States; and the financial burden of moving and relinquishing her current employment. Further, as noted above, the applicant's wife devotes considerable time to the care of her ailing parents, and having to leave them would result in significant emotional hardship. Documentation on the record indicates that the applicant's wife suffers from herpes and has been diagnosed with a heart murmur, and counsel cited information provided by the Center for Disease Control and the U.S. Department of State describing poor medical facilities in Nigeria, where "diagnostic and treatment equipment is most often poorly maintained and many medicines are unavailable." See *Counsel's Brief in Support of Appeal* at 2. Further, having to adjust to a new culture and language, poor economic conditions, and security concerns, particularly for U.S. citizens, would contribute to the hardship experienced by the applicant's wife. The record includes a Travel Warning issued by the U.S. Department of State that states:

The Department of State continues to warn U.S. citizens of the dangers of travel to the country. . . . The lack of law and order poses considerable risks to travelers. Violent crimes committed by ordinary criminals, as well by persons in police and military uniforms, can occur throughout the country. . . . Road travel is dangerous. Robberies by armed gangs have been reported on rural roads and within major cities. *U.S. Department of State, Bureau of Consular Affairs, Travel Warning*, dated May 20, 2005.

When considered in the aggregate, the factors of hardship to the applicant's wife, should she relocate to Nigeria, constitute extreme hardship. This finding is largely based on the fact that separation from her parents and inability to continue to provide the care they need would cause significant hardship, and, as noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998).

Based on the forgoing, the AAO finds that the applicant's wife will face extreme hardship if the applicant's waiver application is denied. Thus, the applicant has shown that a qualifying relative would suffer extreme hardship if he is required to depart the United States.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for section 212(i) relief 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 are the applicant's attempt to enter the United States with a fraudulent passport in 1996 and his subsequent conviction of fraudulent use of a passport. The positive factors in this case include the applicant's significant family ties to the United States, including his wife, daughter, parents-in-law, and other members of his wife's family; hardship to the applicant's wife and daughter if he were compelled to depart the United States; the fact that the applicant assists in caring for his parents-in-law; the applicant's record of working and paying his taxes in the United States; the applicant's involvement in his community through his church and as a volunteer for other organizations; the applicant's length of residence and ties to the United States, including a home owned by him and his wife; and his lack of a criminal record aside from his 1996 conviction related to his use of a fraudulent passport.

Although the applicant's immigration violations cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) 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.