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FILE:

[REDACTED]

Office: BALTIMORE

Date: MAY 01 2009

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 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.

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).

Michael Shumway

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. The district director subsequently withdrew that decision of denial and denied the application again. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Prior to the filing of the instant waiver application, this case had a complicated procedural history, with various Form I-130 petitions, I-485 applications, I-601 applications, and a motion to reopen being filed at various times, and various decisions being issued on those petitions, applications, appeals taken from their denials, and the motion. Today's decision is concerned with the Form 601 Application for Waiver of Ground of Excludability filed on October 1, 2004 and the denial of that decision issued on December 14, 2006. However, all of the evidence in the record will be considered, regardless of when it was filed, or the petition, application, appeal, or motion with which it was filed.

The record reflects that the applicant is a native and citizen of Nigeria and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is the spouse of a U.S. citizen and father of three U.S. citizen children. The applicant seeks a waiver of inadmissibility in order to remain in the United States with his wife and children.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen wife and children and denied the application. On appeal counsel contended that the evidence submitted demonstrates that the applicant's wife would suffer extreme hardship if the application for waiver is not approved.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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 contains a Form I-485 that the applicant signed on June 18, 1990 and which was subsequently submitted in an attempt to gain lawful permanent resident (LPR) status for the applicant. On that form the applicant indicated that he had last entered the United States on August 6, 1971 and that his name is [REDACTED]. The applicant indicated that he was applying pursuant to section 249 of the Act, based on his having entered the United States prior to January 1, 1972.

That form was signed by Clifford C. Cooper, an attorney with offices at 901 S. Highland Street in Arlington, Virginia. The applicant's signature on that Form I-485 appears to match the applicant's signature on Forms G-325A that he signed on September 30, 1993 and May 2, 1997.

With that application the applicant provided various documents to support the assertion that he was in the United States as claimed. One item of evidence is a letter, dated February 11, 1990, on letterhead of Rapid Transit, Inc. of Washington, D.C., purportedly signed by [REDACTED] Director. That letter states that Sherif Olanrewaju had been working as an independent driver with that company since December of 1985.

The record contains a letter, dated March 22, 1991, from [REDACTED], Special Assistant U.S. Attorney, to [REDACTED] of Rapid Transit, Inc. of Washington, D.C. Ms. [REDACTED] indicated that she had prepared an Affidavit in Lieu of Testimony for [REDACTED] signature based on a recent telephone conversation and was submitting it for [REDACTED] s signature.

That Affidavit in Lieu of Testimony is also included in the record. It states, “[REDACTED] was not employed by Rapid Transit, Inc. as an independent driver or in any other position between December 1985 and February 1990 as indicated on [the applicant’s employment verification letter.]” It further states, “[REDACTED] was at one time employed by Rapid Transit Inc., however he left the company in 1986. Further, the signature appearing on [the applicant’s employment verification letter] is not the signature of [REDACTED].”

In a letter, dated May 6, 1999, the applicant’s then attorney stated that the applicant’s July 12, 1990 Form I-485 was filed by [REDACTED], and appeared to imply that this filing was without the applicant’s consent or knowledge. Former counsel also stated that the applicant had explained this at his August 11, 1998 INS interview. The AAO notes that the applicant appears to have signed that Form I-485.

Previous counsel also appeared to imply that the district director failed to consider the applicant’s assertion that the Form I-485 at issue was filed without the applicant’s knowledge. The record contains a letter, dated April 27, 1999 from the applicant’s wife. In it, she stated that she was present when the applicant’s previous counsel explained the applicant’s version of the circumstances of the submission of the applicant’s previous Form I-485 application. She further stated that she, her children, her mother, and her sister are very dependent on the applicant for financial support.

Whether the district director considered the applicant’s explanation is not made clear in the decision of denial. The AAO, however, has considered the applicant’s explanation and finds it unpersuasive. The evidence in the record demonstrates that the applicant signed the July 12, 1990 Form I-485, that he therefore knew it was being submitted and consented to its submission, and that at least some of the applicant’s evidence, submitted with that Form I-485 in an effort to obtain lawful permanent resident status, an immigration benefit, was fraudulent.

The evidence in the record is sufficient to show that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien . . .”

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant’s wife is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

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).

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).

The record contains evidence that the applicant’s wife’s father, [REDACTED] was killed in Lagos, Nigeria on March 18, 1994. The applicant’s wife’s April 27, 1999 letter, mentioned above, states that her uncles had killed her father, and that she and the applicant would be in danger if they returned to Nigeria.

In essentially identical declarations dated April 27, 1999, the applicant's mother-in-law and sister-in-law, [REDACTED] and [REDACTED], stated that the applicant's wife's uncles, the late [REDACTED]'s brothers, had killed him for "financial/business reasons." They further stated that both the applicant and his wife would be in danger from those uncles if they returned to Nigeria. No supporting evidence was provided and the applicant's mother-in-law and sister-in-law did not state the basis of their asserted knowledge. Those letters also state that, if the applicant were forced to go to Nigeria, he would be unlikely to find employment, and they would lose his financial support. No evidence was provided to support that proposition either.

The record contains a report, dated May 23, 1996, pertinent to treatment of [REDACTED], a child of the applicant and his wife, at Children's Hospital in Washington, D.C. That report indicates that Hassan was then six weeks old, and had poor cardiac function at birth requiring prolonged intubation. It listed medications he was given and their dosages, and various clinical findings pertinent to blood pressure, electrocardiogram results, and similar tests. The doctor further stated that the treatment plan at that time was to continue medical treatment for six months, follow up with an outpatient appointment six weeks later, and then reassess [REDACTED] condition.

The record contains a note, dated May 10, 2005 and written on the prescription pad of [REDACTED], a medical doctor practicing in Silver Spring, Maryland. That note states that [REDACTED] had heart problems when he was young and was then scheduled to see a cardiologist on May 17, 2005 at Children's Hospital. A second note written on the same pad requests that [REDACTED] be given an Echocardiogram, noting that he has a history of heart murmur.

The record contains an Evaluation Report, dated April 23, 1999, from [REDACTED] a clinical social worker practicing in Takoma Park, Maryland. [REDACTED] stated that the applicant's wife reported that her uncles shot her father to death and would murder the applicant too, if he returned to Nigeria. [REDACTED] stated that the applicant's wife was then studying to become a registered nurse, but that without the applicant's financial assistance she would be forced to quit school, thus losing her chance at a career. [REDACTED] stated that the applicant's wife would also be forced to quit her job and seek public assistance. [REDACTED] stated that the applicant's wife is experiencing multiple symptoms of depression and anxiety, including "hopelessness, helplessness, lack of initiative and lack of interest in pleasurable activities." She stated that the applicant's wife also reported chronic feelings of agitation and self-criticism and crying spells, that she has overeaten and is depressed and concerned about her body image. The social worker also stated that [REDACTED] one of the children of the applicant and his wife who was then three years old, "was born with a weak heart, and he needs to have this monitored regularly." She added, "[i]t is certainly possible that the child's health would be further compromised by the stress of losing his father" and that "this threat would undoubtedly affect [the applicant's wife] as well."

[REDACTED] stated, "It is unquestionable that, considering [the applicant's wife's] current stress level and the severity of her depression and anxiety, her condition would worsen substantially if her husband were to leave," and that her fears for the applicant's safety would also "undoubtedly add to the applicant's wife's depression."

The record contains a letter, dated April 7, 2000, from a professor in the nursing program at the applicant's wife's college, stating that the applicant's wife had attended that college on a part-time basis, entered the nursing program in the fall of 1999, and had only one year remaining to complete the nursing program. She stated that the applicant's wife would be unlikely to complete the program without the applicant's financial support.

The record contains a declaration, dated April 11, 2000, from the applicant's wife. In it, she stated that, after her father's death her uncles evicted them from their house, dispossessed them of their belongings, and told her that if she did not sign over her inheritance from her father they would harm her and her sister. She further stated that she wanted to be with her husband but could not go to Nigeria, citing police and government corruption and her uncles' desire to kill her.

The record contains a letter, dated May 11, 2005, from [REDACTED] a psychiatrist practicing in Washington, D.C. That letter states that it is a "psychiatric evaluation [of the applicant's wife] completed May 11, 2005. It does not indicate that [REDACTED] had more than one interview with the applicant's wife. [REDACTED] stated that the applicant's wife reported that she had "been seriously depressed for weeks since learning that [the applicant] may be deported," that she has crying spells, poor sleep, difficult concentration, suicidal ideation, and anxiety. She further stated that the applicant's wife had left work early for several previous days because she is nervous about the future. [REDACTED] diagnosed the applicant's wife with Axis I Major Depression Recurrent, **Dysthymic Disorder**, and Post-traumatic Stress Disorder. She stated that the evaluation of the applicant's wife was completed on May 11, 2005, but did not state that it was the result of more than one meeting with the applicant's wife. She recommended that the applicant remain with his wife and that his wife start seeing a psychiatrist for treatment of her depression as soon as possible. She also noted that the applicant's wife completed her nursing degree in 2001 and is a Registered Nurse.

The record contains a letter, dated September 13, 2005, from [REDACTED] a medical doctor practicing in Rockville, Maryland. [REDACTED] stated that he treats the applicant's wife for various disorders, including hypertension, high risk for developing diabetes, and significant reactive depression. Although she has responded well to counseling and medication, and currently working 12-hours shifts as a registered nurse, [REDACTED] stated,

I am quite certain that [REDACTED] will not tolerate the psychologic [sic] stress resulting from her husband's absence, and I will no longer be able to control her depression with counseling and medication. If [the applicant] is not granted a waiver, I fully expect her to descend into a state of sever reactive depression such that she will no longer be employable.

In a brief filed on appeal, counsel stated that, if the applicant is removed to Nigeria, his wife will be forced to support her family, care for her three children, and ensure that her eldest son receives adequate medical care for his heart condition. Counsel stated that the applicant's eldest son has a heart murmur and that the district director had "essentially disregard[ed] the importance of the heart condition and the effect that it has upon [the applicant's] wife and family." Counsel argued that the

evidence submitted demonstrates that the applicant's wife would suffer extreme hardship if waiver is not granted in this matter.

Counsel mischaracterized the evidence as showing that the applicant's son has a heart murmur. The evidence shows that the son has a history of heart murmur and other heart problems when he was younger, and was prescribed a follow-up echocardiogram, apparently to be administered on May 17, 2005. The record does not contain any indication that the applicant's son now has any heart abnormalities. If he does now have a heart murmur or any other cardiac abnormality, the record contains no evidence of its severity. Even if they are of greater consequence, the record is silent on whether they are serious enough to require the applicant's presence in the United States.

The evidence in the record does not indicate that the medical care available in Nigeria would be *insufficient to serve the needs of the applicant's family*.

Although the input of any mental health professional is respected and valuable, the evidence pertinent to the applicant's wife's psychological condition is unconvincing. The April 23, 1999 reports from [REDACTED] states that it is "based on a face[-]to[-]face interview." It does not indicate that [REDACTED] had any previous or subsequent contact with the applicant's wife. The nature of the information the report contains makes clear that it was based almost exclusively on the applicant's wife's self-report and the applicant's input. The May 11, 2005 report from [REDACTED] also appears to be based on a single meeting with the applicant's wife and upon her own self-reporting.

The record fails to reflect an ongoing relationship between the applicant's wife and either the social worker or the psychiatrist who provided those reports, or any history of treatment for the disorder allegedly suffered by the applicant's wife. Moreover, the conclusions reached in the submitted report, being based on single self-reporting interviews, do not reflect the insight and elaboration commensurate with an established professional relationship. Those findings in those reports are thus speculative and the reports' value in determining extreme hardship is greatly diminished.

The September 13, 2005 letter from [REDACTED] does indicate an established relationship. It shows that the doctor has treated the applicant's wife for various physical conditions, including high blood pressure and high risk for future diabetes. It does not state the severity of the applicant's wife's high blood pressure and her diabetes risk, and provides no indication that they are a product of the applicant's immigration status or that they require his presence in the United States.

As to the applicant's wife's depression, the doctor did state that the applicant's wife's insecurity pertinent to the applicant's immigration status is the primary cause and that he believes it will worsen if the applicant is removed from the United States. Although a letter from [REDACTED], dated only four months prior, indicated that the applicant's wife's preoccupation with her husband's immigration status was affecting her ability to work, [REDACTED]'s letter indicated that she was then working 12-hour shifts. Although [REDACTED] indicated that he was "quite certain" that the applicant's wife would be unable to tolerate the stress of her husband's removal, he gave no basis for that stridently stated belief.

The applicant's wife has claimed, at various times, to be dependent upon the applicant's financial support. Various others have also stated that the applicant's wife is financially dependent on the applicant. Counsel argued that part of the hardship that would befall the applicant's wife if the waiver application is not approved is that she would be obliged to support her family.

The applicant's wife may have been dependent on the applicant previously, especially when she was attending school. She has now graduated from school, however, and entered the nursing profession. The two most recent tax returns in the record are for 2002 and 2003,¹ the first and second years after her graduation from the nursing program.

The joint 2002 Form 1040 U.S. Individual Tax Return of the applicant and his wife shows that they had total income of \$75,777 during that year. Of this, \$76,825 consisted of Line 7 wages, Line 12 Business income (or loss) showed a loss of \$1,368, and the \$420 balance consisted of Line 10 Taxable refunds, credits, or offsets of state and local income taxes. The applicant's wife's 2002 Form W-2 Wage and Tax Statements show that she earned \$76,724.75 during that year. That amount, rounded, is equal to all of the wages shown on the Form 1040. A Schedule C attached to that return shows that, during that year, the applicant, in his taxicab business, had gross receipts of \$11,250, but declared a loss of \$1,368 after the expenses required to produce that income. The record does not indicate that the applicant contributed anything to family income during 2002, other than that loss.

The joint 2003 Form 1040 U.S. Individual Income Tax Return of the applicant and his wife shows that they had total income of \$89,662 during that year. Of this, \$87,034 consisted of Line 7 wages, Line 12 Business income (or loss) showed a profit of \$1,891, and the \$737 balance consisted of Line 10 Taxable refunds, credits, or offsets of state and local income taxes. The applicant's wife's 2003 Form W-2 Wage and Tax Statements show that she earned \$87,033.25 during that year. That amount, rounded, is equal to all of the wages shown on the Form 1040. A Schedule C attached to that return shows that, during that year, the applicant, in his taxicab business, had gross receipts of \$15,047, and declared a net profit of \$1,891 after the expenses required to produce that income. The record does not indicate that the applicant contributed substantially to family income during 2003.

The two most recent tax returns, which are the best evidence in the record pertinent to the applicant's family's recent income, do not indicate that the applicant's wife is dependent, to any substantial degree, on the applicant's income.

Various members of the applicant's wife's family have asserted that the wife's father was murdered by his brothers, who would kill the applicant and his wife if they returned to Nigeria. A printed sheet in the record states that [REDACTED] the applicant's wife's father, died on March 18, 1994. The record contains no evidence, other than the assertions of the applicant's wife

¹ The record also contains tax returns from 1979 through 1989 that the applicant filed, using the name [REDACTED] when he was single, and 1996 and 1997 returns he filed jointly with his present wife. Those tax returns are a poor index of the family's income and the provenance of that income since the applicant's wife became a registered nurse in 2001.

and her family, that [REDACTED] was shot, that he was murdered, that his brothers killed him, or that they are now lying in wait to kill the applicant and the applicant's wife should they return to Nigeria. The evidence does not demonstrate that any such danger exists.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife faces extreme hardship if the applicant is refused admission. Rather, the record suggests that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

The record demonstrates that the applicant has very loving and devoted family members who are extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *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); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits 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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.