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U.S. Citizenship
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FILE:

Office: DALLAS, TX

Date: NOV 13 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.

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).

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Dallas, Texas. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 procuring a visa to the United States by fraud or willful misrepresentation. The applicant's spouse and two children are U.S. citizens, and he seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The field office director determined that the applicant had not established extreme hardship to his spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, at 2, dated April 23, 2008.

On appeal, counsel asserts that the field office director erroneously determined that extreme hardship had not been shown and he details significant changes that have occurred in the lives of the applicant and his spouse since the original submission of the Form I-601. *Form I-290B*, at 2, received May 22, 2008.

The record includes, but is not limited to, the applicant's spouse's statements, medical letters/records for the applicant's spouse and health insurance documents for the applicant's spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant obtained a B-1 nonimmigrant visa on December 2, 1999 by presenting a false marriage certificate and falsely claiming that he was married with children. The AAO finds the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for his misrepresentations.

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.

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, in this matter, the applicant's spouse. Hardship to the applicant or his children is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship affects the qualifying relative. 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 lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to a qualifying relative must be established whether the qualifying relative resides in Nigeria or in the United States, as the qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event that the qualifying relative resides in Nigeria. The record does not address this prong of the analysis. Therefore, the AAO is unable to determine that the applicant's spouse would experience extreme hardship upon relocating to Nigeria.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. Counsel states that the applicant's spouse was confined to bed rest during her pregnancy, her twin children were born prematurely on May 14, 2008, the twins were required to be in the hospital until mid-June 2008, the applicant's spouse will be required to devote her full-time attention to the twins, and she has been terminated by her employer due to her absences from work. *Form I-290B*. The applicant's spouse states that she was at high risk throughout her pregnancy; she may be able to get her job back depending on the health progress of the twins; she is dealing with the health issues of her children, her lack of employment, her health issues as a result of the difficult pregnancy and post partum issues, and the possibility that the applicant will not be able to share responsibility for their children and support her in establishing a healthy household; they depend 100 percent on his financial support; and this situation creates a lot more stress on her, which affects her ability to care for her twins. *Applicant's Spouse's Statement*, at 1-2, dated May 21, 2008. The record reflects that the applicant's spouse was projected to be able to

return to work eight weeks after the birth of her children, i.e., July 10, 2008. *Letter from* [REDACTED], dated May 19, 2008. The record reflects that the applicant's spouse's employment was terminated after she had used the maximum amount of time allowed for a leave of absence. *Letter from Texas Health Resources*, dated May 14, 2008. The record also reflects that in 2005 the applicant's spouse was diagnosed with uterine fibroids and had a laparotomy with multiple myomectomy and lysis of adhesions. *Applicant's Spouse's Discharge Summary*, at 1, dated December 10, 2005.

The record establishes that the applicant's spouse had a difficult pregnancy and that her employment was terminated as a result of her inability to work. However, the record also reflects that the applicant's spouse was expected to be able to return to work as of July 10, 2008. The record is, therefore, unclear as to the applicant's spouse's financial status following the birth of her children. It also lacks evidence to establish that, as counsel claims, the applicant's spouse was going to be required to devote herself full-time to her children for an indefinite period. The record does not include sufficient evidence of emotional, financial, medical or other hardships that, in the aggregate, establish that the applicant's spouse would experience extreme hardship upon remaining in the United States without the applicant.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being removed.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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. *See* 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.