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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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U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW ORLEANS, LA

Date: **OCT 23 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, New Orleans, Louisiana, and 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 admission to the United States by fraud or willful misrepresentation. The applicant's spouse and child 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 concluded that the applicant had 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 Field Office Director*, at 4, dated December 10, 2008.

On appeal, counsel asserts that the field office director's decision was erroneous as it failed to consider the applicant's spouse's extreme hardship and ignored the extreme hardship to his child. *Form I-290B*, at 2, received January 12, 2009. The Form I-290B indicates that counsel will file a brief and/or additional evidence within 30 days, but as of the date of this decision, no brief or additional evidence is found in the file.

The record includes, but is not limited to, the Form I-290B and previously submitted documents. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant presented a visa and passport that did not bear his name when he entered the United States in 1993. The AAO finds the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for this misrepresentation.¹

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 AAO notes the applicant's July 6, 1995 arrest for possession of less than 15 grams of heroin and that the record indicates that the charge may be pending disposition. Depending on the disposition of this case, the applicant may be inadmissible under section 212(A)(i)(II) of the Act for violation of a law relating to a controlled substance for which no waiver is available.

- (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, his child or other family members 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 and the totality of the hardship factors will be considered. 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. Counsel states that the applicant's spouse and child will not be able to relocate to Nigeria and that the field office director disregarded the fact that, when compared to the United States, Nigeria has a lower standard of living, fewer educational opportunities, and fewer medical treatment facilities; and that the emotional, academic and financial hardship that the applicant's child would suffer upon relocation amounts to exceptional and extremely unusual hardship. *Form I-290B*, at 2. One of the applicant's friends details the numerous difficulties that the applicant would encounter in trying to practice medicine in Nigeria and the substandard health care there. *Email from [REDACTED]*, dated October 29, 2008.

The applicant's spouse states that she cannot move her family to Nigeria, the Nigerian healthcare system is very poor and is not equipped to handle her parents' medical problems, her son should not be subjected to living under the harsh conditions in Nigeria, she has lived in the United States for the last 13 years, her entire family resides in the United States, and she has no family support in Nigeria. *Applicant's Spouse's Statement*, at 3, dated October 29, 2008.

The applicant's spouse further states that her parents and siblings are in the United States, she and the applicant are responsible for taking care of all of them, her father is a heart-transplant recipient, her father is on dialysis three days a week, her mother has a congenital heart disease and diabetes, she and the applicant support her parents financially and medically, her parents may require government assistance without the applicant's financial support, and she and the applicant have had to assume her youngest brother's educational expenses. *Id.* at 1-2.

The AAO notes the applicant's spouse's claims that physicians in Nigeria earn an average of \$400 per month and that her husband would be unable to earn sufficient money in Nigeria to meet their financial obligations. It also acknowledges the email sent to the applicant by one of his former colleagues who states that it will be difficult for the applicant to obtain a medical license in Nigeria and who also comments on the poor state of healthcare in Nigeria. However, neither statement is sufficient to establish the states of the medical profession or healthcare in Nigeria. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See 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)). The record does not provide documentary evidence of current country conditions in Nigeria to establish that the applicant or his spouse would be unable to obtain suitable employment in Nigeria, that the applicant's child would experience hardship in Nigeria and how this would cause hardship to the applicant's spouse. The record also fails to document that the applicant's spouse's parents would be unable to obtain health care if the applicant and his spouse relocated to Nigeria, or the hardship that the applicant's spouse would experience due to any hardship that her parents and brother might encounter without her and the applicant.

The AAO finds that the record does not include sufficient evidence of emotional, financial, medical or any other type of hardship that, in the aggregate, establishes 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 field office director ignored the fact that the applicant has a medical practice in U.S. territory; he supports four households; his spouse and her family are entirely dependent on him; his spouse, newborn child, and his spouse's parents would become public charges in his absence; his and his spouse's property would be foreclosed upon due to their inability to pay loans; and his spouse has a history of depression and she is at risk of suffering from post-partum disorder. *Form I-290B*, at 2.

The applicant's spouse states that she has been married to the applicant for four-and-a-half years, she has been unable to work preceding and following the delivery of her child, she cares for their infant son due to the applicant's hectic work schedule, the applicant is the sole breadwinner of the family, she will not be able to meet their monthly financial commitments of over \$21,000, they are paying rent as well as a mortgage on a house that they cannot sell, she will also have to pay the applicant's office rent, her parents and siblings are in the United States, she has the responsibility of taking care of all of them, her father is a heart-transplant recipient and is on dialysis three days a week, her mother has a congenital heart disease and diabetes, she and the applicant support her parents financially and medically, her parents may require government assistance without the applicant's financial support, she and the applicant have had to assume her youngest brother's educational expenses, her mother-in-law in Nigeria depends solely on the applicant, she will have to assume the responsibility for her mother-in-law in his absence, her son will grow up without his father and there have been many studies detailing the negative consequences of minority children growing up without a father, she will have to work around the clock and will not have time to care for her son, her parents are physically unable to assist her in caring for him, childcare will become a new expense, she has a history of depression and has taken medication in the past, she fears that she will suffer severe postpartum depression, any hardship her son suffers will bear directly on her as she relies on the applicant to provide support in raising her son, the applicant will not earn sufficient money in Nigeria, the average physician in Nigeria earns \$400 per month, and the unemployment rate for physicians is high in Nigeria. *Applicant's Spouse's Statement*, at 1-3.

The applicant's mother-in-law states that she has congenital heart disease, atrial fibrillation, hypertension and diabetes; the applicant and his spouse have paid her prescription and medical bills since 2005, have paid for some of her and her spouse's utilities, and the applicant has provided medical advice and prescription medications in emergencies; and it is difficult for her to work full-time due to her conditions. *Applicant's Mother-in-Law's Statement*, dated October 28, 2008. The record reflects that the applicant's spouse's father is a heart transplant recipient who needs hemodialysis three times a week. *Letter from [REDACTED]*, undated. The record includes prescription records for the applicant's spouse's father. The applicant's spouse's brother states that the applicant's spouse provides for his educational expenses and that she would be greatly distressed if he is unable to complete his education. *Applicant's Spouse's Brother's Statement*, dated October 29, 2008.

The record does not include documentary evidence that demonstrates that the applicant and his spouse have expenses of \$21,000 per month. While the record contains copies of the applicant's and his spouse's mortgage, a rental agreement and insurance statements, there is no documentary evidence that establishes that the applicant is supporting his mother in Nigeria or that the applicant's spouse would be expected to assume this financial responsibility if the applicant returned to Nigeria, that the applicant's spouse's brother attends college or is supported by his sister, that the applicant and his spouse are involved in paying for the spouse's parents' medical expenses or any other bills, or that the applicant or his spouse have outstanding school loans or pay rent on a medical office. The record also fails to document that the applicant's spouse is unable to obtain employment and assist with her family's expenses, that she has a history of depression or is at risk of post partum

depression, or that her child would experience hardship and the effect of this hardship on her. The record does not include sufficient evidence of the emotional or any other hardship that the applicant's spouse is experiencing due to caring for her parents or potentially caring for her mother-in-law. Further, as previously indicated, the record fails to provide published country conditions materials to establish that the applicant would be unable to earn sufficient income in Nigeria to financially assist his family in the United States. The record does not include sufficient evidence of emotional, financial, medical or any other type of hardship that, in the aggregate, establishes that the applicant's spouse would experience extreme hardship upon remaining in the United States.

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 deported.

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.