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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: NEW ORLEANS, LA

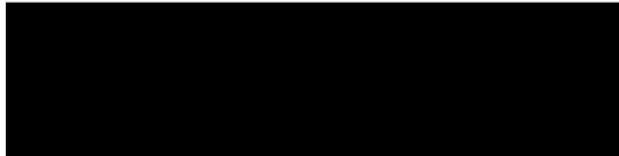
Date: FEB 01 2010

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).

A handwritten signature in black ink that reads "Michael Shumway".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, New Orleans, Louisiana, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen/reconsider. The motion will be granted. The AAO will affirm its previous decision.

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, the AAO also determined that the record did not demonstrate that the bar to the applicant's admission would result in extreme hardship to his spouse. *Decision of the Chief, Administrative Appeals Office*, dated October 23, 2009.

On motion, counsel asserts that the AAO erroneously dismissed the applicant's appeal and failed to consider that a denial of the applicant's waiver application would result in extreme and unusual physical, mental and financial hardship to his U.S. citizen spouse. *Form I-290B*, dated November 20, 2009. In support of his assertions, counsel submits a statement and additional evidence. Although counsel indicates that the applicant will be providing further evidence in support of his waiver application, this evidence is not found in the record. Therefore, the record is considered complete and has been reviewed in its entirety to reach a decision in this matter.

The record includes, but is not limited to, counsel's statement, country conditions reports on Nigeria; a statement from the applicant's mother and sister; a Western Union transaction profile; educational loan statements; a notice from the Internal Revenue Service; loan statements; a Blue Cross/Blue Shield premium notice; telephone and cable bills; two credit card statements; and previously submitted documentation.

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. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or the willful misrepresentation of a material fact.

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 only qualifying relative is his spouse. Hardship to the applicant, his child or other family members is not directly relevant to a *determination of extreme hardship in a 212(i) waiver proceeding* and will be considered only to the extent that such hardship is found to affect the applicant's spouse. 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Nigeria or in the United States, as the *qualifying relative is not required to reside outside 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 his spouse in the event that she relocates to Nigeria. On motion, the applicant, through counsel, reiterates his previous claims that his spouse and child will not be able to relocate to Nigeria as it has a lower standard of living, fewer educational opportunities, and fewer medical treatment facilities; and that the emotional, academic and financial hardship that his child would suffer upon relocation would amount to exceptional and extremely unusual hardship. *Form I-290B*, at 2. In support of these assertions, counsel submits copies of Department of State publications on Nigeria, specifically a report entitled "Country Specific Information on Nigeria," dated April 21, 2009, and a "Travel Warning" for Nigeria, dated July 17, 2009 and current as of this date. Both reports warn U.S.

citizens against travel to Nigeria and specifically advise against travel to the Niger Delta. While the AAO does not find these reports to support the applicant's claim that his spouse would suffer extreme hardship in Nigeria as a result of its lower standard of living or more limited opportunities, it does find them to demonstrate that relocation to Nigeria would pose a risk to her safety. Accordingly, the AAO finds that when such security concerns are added to the normal hardships created by relocation the applicant has established that relocating to Nigeria would result in extreme hardship for his spouse.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. On motion, the applicant's counsel restates hardship claims previously raised by the applicant on appeal. He asserts that the applicant has a medical practice in the United States, that he supports four households; that his spouse and her family are entirely dependent on him and would become public charges in his absence; that his and his spouse's property would be foreclosed upon due to their inability to pay their loans; and that his spouse has a history of depression and is at risk for post-partum disorder. *Form I-290B*, at 2. While the AAO acknowledges the applicant's claims, it continues to find, as it did on appeal, that the record lacks the documentary evidence needed to support them. Without appropriate documentation, the applicant's assertions are insufficient proof that his spouse would experience extreme hardship if he were to be removed and she remained in the United States.

The additional documentation submitted on motion, even when added to that previously provided, does not establish that the applicant is supporting four households or, as he has previously claimed, that his monthly expenses total more than \$21,000. The AAO acknowledges the letter from the applicant's mother and sister, and the Western Union transaction profile that indicates the applicant sent \$1,650 to his mother in Nigeria during the 90-day period ending November 22, 2009. However, this evidence is not sufficient to establish that the applicant sends his family in Nigeria \$1,000 each month or that his spouse would be expected to continue such payments in his absence as has been claimed. The AAO also notes that the record continues to lack any documentation to establish that the applicant's in-laws are financially dependent on him or that he and his spouse are paying for his in-laws' medical expenses or any other of their bills. Neither has the applicant submitted evidence to establish that his brother-in-law is attending college or depends upon the applicant and his spouse for financial support. Moreover, although the applicant has submitted proof of his spouse's outstanding educational loans and several of their credit card statements, this documentation does not establish the respective monthly payments at the levels that have been indicated by the applicant.

The AAO also notes that the applicant has submitted no evidence to establish that his spouse would be unable to obtain employment in his absence, allowing her to meet the family's financial obligations. It further finds the record to contain no proof that the applicant would be unable to find employment outside the United States that would allow him to continue to financially assist his spouse. The AAO has reviewed the country conditions information on Nigeria provided in the Department of State materials submitted by counsel. However, as previously indicated, it does not find them to establish the economic situation in Nigeria or that the applicant would be unable to find gainful employment as a physician upon his return. The information provided in "Country Specific

Information,” on medical facilities and health in Nigeria serves as guidance for travelers, not as proof of the medical employment situation there. Accordingly, the AAO continues to find there is insufficient evidence to determine the financial impact of the applicant’s removal on his spouse.

The applicant also continues to raise his spouse’s history of depression and her risk of post-partum depression as a basis for a finding of extreme hardship. In dismissing the applicant’s appeal, the AAO noted that the record offered no documentary evidence that demonstrated that the applicant’s spouse had a history of depression or that she would be likely to face post-partum depression in the applicant’s absence. On motion, the applicant has submitted no proof, e.g., an evaluation by a mental health professional or medical records, in support of these claims. Going on record without supporting documentation is not sufficient to 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, therefore, also fails to establish the emotional impact of the applicant’s removal on his spouse.

Having considered the hardship factors raised by the applicant, individually and in the aggregate, the AAO finds that he has not established that his spouse would suffer extreme hardship if he were to be removed and she remained 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.

As a review of the documentation in the record fails to demonstrate that the applicant’s spouse would experience extreme hardship if she remains in the United States, the applicant has not established eligibility for a waiver under section 212(i) of the Act. 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(a)(6)(C) 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 AAO will affirm its previous decision.

ORDER: The decision of the AAO is affirmed.