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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: [REDACTED]

Office: LOS ANGELES

Date: **JAN 22 2010**

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:



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 District Director, Los Angeles, denied the instant waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Nigeria.

In a decision dated February 6, 2006 the district director found that the applicant committed fraud or made a material misrepresentation in seeking an immigration benefit and is therefore 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).

The applicant seeks a waiver of inadmissibility pursuant to section 212(i)(1) of the Act in order to reside in the United States with his wife and her children. The district director also found that the applicant had failed to establish that the bar to admission would impose extreme hardship on a qualifying relative as per section 212(i)(1) of the Act and denied the waiver application accordingly. On appeal, counsel submitted additional evidence.

The record contains, among other documents, a Form I-94 issued in the name of [REDACTED], copies of letters from the applicant's wife, copies of her tax returns during 2001, 2002, and 2003, before she married the applicant, Form W-2 Wage and Tax Statements from those same years, a letter indicating that the applicant's wife's is asthmatic, bank statements, cell telephone bills, utility bills, and documents pertinent to insurance policies, cable television, bank accounts.

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 shows that the applicant was admitted to the United States on April 21, 2002 by misrepresenting himself to be [REDACTED] Counsel and the applicant have not disputed the applicant's inadmissibility on appeal. The AAO therefore affirms the district director's finding that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 or his stepchildren is not directly 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 in this case. 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).

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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).

U. S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[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." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *see also 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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. To demonstrate that the applicant’s absence would cause extreme hardship to his wife, the applicant must show that, if he is absent from the United States and his wife remains in the United States, she will suffer extreme hardship. The applicant must also demonstrate that if he leaves and his wife joins him to live in Nigeria, that will cause her extreme hardship. The AAO will first consider the scenario of the applicant being removed and his wife remaining in the United States.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that, if the applicant returns to Nigeria and the applicant’s wife remains in the United States, the applicant’s wife will experience extreme hardship as a consequence of her separation from the applicant.

In various letters the applicant’s wife described meeting the applicant, and stated that she and her younger child are very attached to him and would miss him if he were removed from the United States, which she stated would traumatize her and her child. The applicant’s wife also stated that she has asthma and that the applicant has supported her, “. . . emotionally, physically, and financially . . .” during her attacks.

In one of her letters, dated September 13, 2006, the applicant’s wife stated that she has five siblings and a son who was then 18 years old. The AAO notes that son would now be approximately 20 years old. On a G-325 Biographic Information form that she signed on November 8, 2004, the applicant’s wife indicated that her mother was then living in San Bernardino, California.

The applicant’s wife stated that she will experience extreme hardship as a consequence of her separation from the applicant, in the form of medical, financial and emotional hardship. As to the financial hardship the applicant’s wife claimed that her husband has provided her income. However, she provided no evidence pertinent to the existence, quantity, or reliability of the applicant’s income.

The applicant’s spouse provided no corroborating evidence from mental health professionals or any other evidence pertinent to the degree of emotional hardship she or her younger child would suffer if the applicant were removed from the United States.

Although statements by the applicant's wife are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain the burden of proof in these proceedings. *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)).

As to the medical hardship, in addition to the applicant's wife's assertion that she has asthma, the record contains a letter dated March 1, 2006 from [REDACTED], a medical doctor and director of a clinic in Inglewood, California. [REDACTED] confirmed that the applicant's wife has asthma and stated that the applicant's wife's condition requires that someone be present with her at all times. He indicated that the applicant has served in that capacity. There is no indication in the record that no one, not the applicant's wife's mother, nor one of her five siblings, nor her 20-year old son, nor anyone else, is available to stay with the applicant's wife.

The applicant's wife also complained of losing the applicant's income, but provided no evidence that the applicant has earned income in the United States. In fact, a G-325A Biographic Information form which the applicant signed on November 8, 2004 indicates that he had been unemployed for the preceding five years. Further, the applicant's wife's own tax returns from 2001, 2002, and 2003, indicate that she earned total income of \$54,422, \$33,140, and \$25,539 during those years. Although the record contains some utility bills and other bills, the record does not contain an exhaustive list, accompanied by corroborating evidence, of the applicant's wife's monthly obligations and the income available to her. Without that information, the AAO is unable to assess the degree of hardship she will suffer by foregoing the applicant's income. The record does not demonstrate that the applicant's wife is unable to support herself and her children without the applicant's assistance.

The AAO acknowledges that if the applicant leaves, his wife will experience hardship. The loss of the company of one's spouse, the loss of any amount of income, and the loss of whatever childcare assistance the applicant may have provided are all examples of hardship.

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.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional, logistical, financial, 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.

The AAO finds that the evidence submitted does not demonstrate that the applicant's wife will suffer extreme hardship if the applicant and his spouse are separated.

In addition, neither counsel, nor the applicant, nor the applicant's wife has provided any evidence, or even asserted, that living in Nigeria would cause the applicant's wife extreme hardship. The AAO further finds that counsel and the applicant have not demonstrated that the applicant's wife will suffer extreme hardship if he is removed from the United States and she joins him in Nigeria.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the typical results of removal or inadmissibility to the level of extreme hardship, whether or not she accompanies him to Nigeria. The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i)(1) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act, the burden of proving eligibility rests 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.