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U.S. Citizenship
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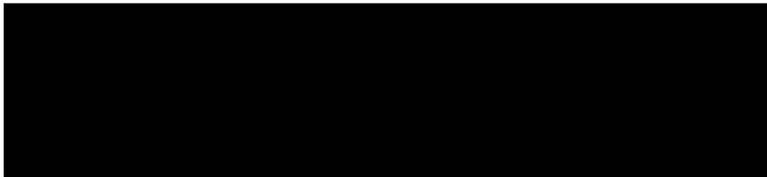


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 03 2008

IN RE: [Redacted]

APPLICATION: Application for Waiver of the Foreign Residence Requirement under Section 212(e) of the Immigration and Nationality Act; 8 U.S.C. § 1182(e).

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and 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 who was admitted to the United States in J-1 nonimmigrant exchange visitor status in August 1979 to participate in a program financed by the U.S. government. He is thus subject to the two-year foreign residence requirement under section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(e). The applicant presently seeks a waiver of his two-year foreign residence requirement, based on the claim that his U.S. citizen spouse and child, born in October 1991, would suffer exceptional hardship if they moved to Nigeria temporarily with the applicant and in the alternative, if they remained in the United States while the applicant fulfilled his two-year foreign residence requirement in Nigeria.

The director determined that the applicant failed to establish that his U.S. citizen spouse and/or child would experience exceptional hardship if the applicant fulfilled his two-year foreign residence requirement in Nigeria. *Director's Decision*, dated November 13, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a letter, dated December 12, 2007; a letter from the applicant's spouse's physician, dated December 11, 2007; evidence of the applicant's child's relocation from California, where his mother resides, to Florida to live with the applicant; a letter from the applicant's and his spouse's minister; a letter from the applicant's spouse, dated December 5, 2007; a letter from the applicant's child, dated December 3, 2007; and photographs of the applicant and his family. In addition, on January 28, 2008, the AAO received a letter from counsel enclosing documentation relating to the applicant's spouse's mental health. The entire record was reviewed and considered in rendering this decision.

Section 212(e) of the Act states in pertinent part that:

No person admitted under section 101(a)(15)(J) or acquiring such status after admission

- (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence,
- (ii) who at the time of admission or acquisition of status under section 101(a)(15)(J) was a national or resident of a country which the Director of the United States Information Agency, pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or
- (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate

of a least two years following departure from the United States: Provided, That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency (or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent), or of the Commissioner of Immigration and Naturalization [now, Citizenship and Immigration Services (CIS)] after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General [now the Secretary, Homeland Security (Secretary)] may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General (Secretary) to be in the public interest except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, or in the case of a waiver requested by an interested United States government agency on behalf of an alien described in clause (iii), the waiver shall be subject to the requirements of section 214(l): And provided further, That, except in the case of an alien described in clause (iii), the Attorney General (Secretary) may, upon the favorable recommendation of the Director, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien.

In *Matter of Mansour*, 11 I&N Dec. 306 (BIA 1965), the Board of Immigration Appeals stated that, "Therefore, it must first be determined whether or not such hardship would occur as the consequence of her accompanying him abroad, which would be the normal course of action to avoid separation. The mere election by the spouse to remain in the United States, absent such determination, is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed. Further, even though it is established that the requisite hardship would occur abroad, it must also be shown that the spouse would suffer as the result of having to remain in the United States. Temporary separation, even though abnormal, is a problem many families face in life and, in and of itself, does not represent exceptional hardship as contemplated by section 212(e), supra."

In *Keh Tong Chen v. Attorney General of the United States*, 546 F. Supp. 1060, 1064 (D.D.C. 1982), the U.S. District Court, District of Columbia stated that:

Courts deciding [section] 212(e) cases have consistently emphasized the Congressional determination that it is detrimental to the purposes of the program and to the national interests of the countries concerned to apply a lenient policy in the adjudication of waivers including cases where marriage occurring in the United States, or the birth of a child or children, is used to support the contention that the exchange alien's departure from his country would cause personal hardship. Courts have effectuated Congressional intent by declining to find exceptional hardship unless the degree of hardship expected was greater than the anxiety,

loneliness, and altered financial circumstances ordinarily anticipated from a two-year sojourn abroad.” (Quotations and citations omitted).

The first step required to obtain a waiver is to establish that the applicant’s U.S. citizen spouse and/or child would experience exceptional hardship if they resided in Nigeria for two years with the applicant. Neither the applicant, his spouse and/or his child specifically detail what hardships they would encounter were they to relocate to Nigeria with the applicant. The only reference made to this criteria is from counsel, who states that the applicant’s son’s “...educational goals will be interrupted if he would have to leave the United States with his father...” *Letter in Support of Appeal*, dated December 12, 2007. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As such, despite the director’s conclusion to the contrary, the AAO finds that as no documentation has been provided to address this prong of the hardship waiver analysis, as required by *Matter of Mansour*, *supra* it has not been established that the applicant’s U.S. citizen spouse and/or child would encounter exceptional hardship were they to relocate to Nigeria for a two-year period to resident with the applicant.

The second step required to obtain a waiver is to establish that the applicant’s U.S. citizen spouse and/or child would suffer exceptional hardship if they remained in the United States during the two-year period that the applicant resides in Nigeria.

The applicant’s child asserts that he will suffer emotional and financial hardship were the applicant to relocate abroad for a two-year period. As he states,

...I currently live with my mother but we have discussed and agreed that I live with my father [the applicant] full time for my final year of high school in order for my father to prepare me for college and assist me in making a choice of which university to attend.

My mother has been unable to work because of her disability. The financial situation was getting worse every day because of my mother’s limited income.... Thank God for my father who made it his duty to make sure that we are okay. He assists us financially so that my mother and I can get what we want and when we want it. He makes sure our bills are paid and that I do not go to school hungry or look for money in the wrong place or from the wrong people....

With my father’s support, I believe I can be anything I want to be. He always says the sky is the limit....

Letter from [REDACTED], dated December 3, 2007.

To begin, no documentation has been provided to establish that the applicant’s child, age 16, will suffer emotional and/or psychological hardship due to his father’s two-year relocation abroad. The record indicates that the applicant’s child already lives apart from his father and as such, he is accustomed to not having the

applicant physically present in his life. Thus, it has not been established that the applicant's child would be unable to communicate with his father on a regular basis while he resides in Nigeria, nor has it been established that the applicant's child would be unable to travel to Nigeria to visit with his father.

As for the financial hardship referenced by the applicant's child, no financial documentation has been provided to establish the applicant's and his family's current economic situation, to corroborate that the applicant would be unable to assist his child financially while residing abroad for two years and/or that the applicant's child, without his father's presence in the United States, would suffer exceptional financial hardship. Nor has any financial documentation with respect to the applicant's former wife has been provided, to establish that she is unable to support their child should the need arise. Finally, it has not been established that the applicant would be unable to obtain gainful employment in Nigeria, thereby allowing him to assist his child with any expenses. Going on record without supporting documentary evidence is not sufficient for purposes of meeting 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)). The applicant's child's hardship, if he remained in the United States for two years without the applicant, does not go beyond that normally suffered upon the temporary separation of a father from his child. While the applicant's son may need to make adjustments with respect to his financial situation while the applicant resides abroad for two years, it has not been shown that such adjustments would cause the applicant's child exceptional hardship.

The applicant's spouse references the following hardships were the applicant to relocate abroad for a two-year period:

...If he [the applicant] were made to leave the U.S. I would suffer extreme hardship; as he has always been there for me. We own our home.... I am a State of Florida Social worker with the Department of Children & Family Services.... My husband supports me and his son that lives in California but travels to our home twice a year.... I have been working for the State of Florida since 1985 and have 4 grown children that do not live in Florida. I would find my self lost if he were not around to help me.... I suffer from High blood pressure and have spells of dizziness. I have been operated on for a growth in my thyroid gland was removed.... However the Doctor is worried that I may require additional surgery in the future....

Letter from [REDACTED], dated July 19, 2007.

With respect to the financial hardship referenced by the applicant's spouse, the AAO again notes that no financial documentation has been provided to establish that without her husband's presence in the United States, she will suffer exceptional financial hardship. Nor has it been established that the applicant will be unable to obtain gainful employment in Nigeria, thereby assisting the applicant's spouse should the need arise. Moreover, the record indicates that the applicant's spouse has numerous adult children who "...all have a job and they are all independent..." See *Letter from* [REDACTED]; dated December 5, 2007. It has thus not been established that said children would not be able to help their mother financially should the need arrive.

As for the emotional hardship referenced by the applicant's spouse, the AAO notes that a letter has been provided by [REDACTED] M.D., a psychiatrist. As [REDACTED] states,

...This letter serves to confirm that the above named patient [the applicant's spouse] was evaluated and treated in my office on December 21, 2007.

[REDACTED] [the applicant's spouse] was found to suffer from Major Depressive Disorder and have several chronic medical conditions....

This patient depends a great deal on her husband [the applicant].... It is my opinion if [REDACTED] [the applicant] is not here to support her, it would have a devastating effect on her ability to care for herself.

Letter from M.D., Psychiatrist, dated December 28, 2007.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and the psychiatrist. The conclusions reached in the submitted letter, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby diminishing the letter's value to a determination of exceptional hardship. In addition, although [REDACTED] references that the applicant's spouse has been diagnosed with major depressive disorder and numerous medical conditions, corroborated by a letter from the applicant's spouse's treating physician, [REDACTED] DO, PA, neither [REDACTED] nor [REDACTED] make any recommendations for the applicant's spouse's continued care, such as regular therapy sessions or other treatment, and/or medications, to further support the gravity of the situation. In addition, it has not been established that the applicant's spouse's situation is exceptional as she has been able to maintain gainful employment, since 1985, for the State of Florida. Finally, it has not been established that the applicant's spouse is unable to travel to Nigeria on a regular basis to visit the applicant. The AAO thus finds that the applicant's departure to Nigeria for a two-year period while his spouse remains in the United States would not cause her hardship that would be significantly beyond that normally suffered upon the temporary separation of families.

The record, reviewed in its entirety, does not support a finding that the applicant's U.S. citizen spouse and/or child will face exceptional hardship if the applicant's waiver request is denied. The burden of proving eligibility for a waiver under section 212(e) of the Act rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that in the present case, the applicant has not met his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.