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



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

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AUG 12 2010

FILE:

Office:

Date:

IN RE:

Applicant:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 [REDACTED]. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania, 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 under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a benefit provided under the Act by willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen husband and children.

The field office director concluded that the applicant 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*, dated February 11, 2008.

On appeal, counsel for the applicant contends that the applicant's misrepresentation was not material, thus she is not inadmissible under section 212(a)(6)(C)(i) of the Act. *Statement from Counsel on Form I-290B*, dated March 12, 2008. Counsel further asserts that the applicant's husband and children will suffer extreme hardship if the applicant is compelled to reside outside the United States. *Statement from Counsel on Attachment to Form I-290B*.

The record contains statements from counsel; statements from the applicant's husband; a copy of the applicant's husband's U.S. passport; copies of birth records for the applicant and the applicant's children; a copy of a lease for the applicant's husband and another individual; reports on conditions in Nigeria and Niger; documentation in connection with the applicant's husband's employment, and; a copy of a marriage record for the applicant and her husband. On appeal, counsel indicates on Form I-290B that he would send a brief and/or evidence to the AAO within 30 days of filing the appeal. The appeal was filed on March 14, 2008. However, as of the date of this decision, the AAO has received no further documentation or correspondence from the applicant or counsel, and the record is deemed complete. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

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)(1) of the Act provides, in pertinent part, that:

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 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 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[.]

The record shows that in approximately 1998 the applicant claimed that her husband's niece was her daughter in [REDACTED] visa application before the U.S. Embassy in [REDACTED]. The applicant's husband stated that this misrepresentation was made to try to give his niece a better life. *Prior Statement from the Applicant's Husband*, dated September 5, 2003. In a subsequent K-3 visa application in 2004, where asked on Form DS-156 (Nonimmigrant Visa Application) whether she had previously assisted others to obtain a visa, entry to the United States, or other U.S. immigration benefit by misrepresentation, the applicant checked "No." The field office director found that the applicant committed a material misrepresentation when she falsely claimed that her husband's niece was her daughter in 1998, and when she failed to reveal this prior misrepresentation in 2004. Accordingly, she found the applicant to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

On appeal, counsel contends that the applicant's initial misrepresentation was not material, thus it does not render her inadmissible under section 212(a)(6)(C)(i) of the Act. *Statement from Counsel on Form I-290B* at 2. Specifically, counsel asserts that whether the applicant had a child was not relevant to her eligibility for a K-1 visa. *Id.* Counsel contends that, as the applicant's 1994 misrepresentation was not material, her subsequent failure to reveal that misrepresentation does not serve as a basis for inadmissibility under section 212(a)(6)(C)(i) of the Act.

Upon review, the applicant's husband's explanation of the applicant's misrepresentation shows that the applicant claimed that her husband's niece was her daughter for the purpose of obtaining immigration benefits for her husband's niece. Thus, the applicant's misrepresentation was material to whether she was eligible to sponsor her husband's niece for immigration benefits in the United States and it may properly serve as a basis for inadmissibility. The record shows that the applicant failed to reveal her attempt to obtain U.S. immigration benefits for her husband's niece by misrepresentation, as required by Form DS-156 in 2004. This constitutes further material misrepresentation, as it cut off a material line of inquiry regarding whether she was admissible to the United States and eligible for a K-3 visa. Based on the foregoing, the applicant was properly deemed inadmissible under section 212(a)(6)(C)(i) of the Act, and she requires a waiver under section 212(i) of the Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon removal is not a basis for a waiver under section 212(i) of the Act. 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).

[REDACTED] provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in 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.

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).

On appeal, the applicant's husband explains that he was born in Nigeria in 1956 and that he has resided in the United States since 1982. *Statement from the Applicant's Husband*, dated [REDACTED]. He states that he will endure extreme hardship if the applicant is prohibited from residing in the United States. *Id.* at 2. He expresses that he loves the applicant and that he wishes for her to become a permanent resident of the United States. *Id.* at 3. He provides that his and the applicant's two children, now ages four and six, are exclusively cared for by the applicant yet they would not go with her to [REDACTED] and professional opportunities. *Id.* at 2. He indicates that he would be compelled to act as a single parent, and his children's hardship would impact him. *Id.*

The applicant's husband states that he has been employed with an automobile dealership since July 5, 2005 and that he earned approximately \$42,000 as of the date of his statement. *Id.* He asserts that he would have decreased financial potential should he relocate to Nigeria. *Id.* He adds that his family has health insurance through his employer. *Id.* He states that he has only visited Nigeria four or five times in the last 25 years, and that he would be unable to provide for his family there as he can in the United States. *Id.* at 3. He cites poor conditions in Nigeria, including hindered economic growth and human rights abuses. *Id.*

Counsel asserts that the applicant's husband and children will suffer extreme hardship if the applicant is compelled to reside outside the United States. *Statement from Counsel on Attachment to Form I-290B* at 1. Counsel contends that the applicant's husband has a phobia preventing him from driving more than short distances, thus he is unable to travel or transport his children without the applicant driving him. *Id.* Counsel asserts that the applicant's son has "a lung illness or disease characterized by wheezing, which requires medical treatment with Dr. Dempsey in York, [Pennsylvania]." *Id.* Counsel contends that the applicant's husband would be unable to care for his two children without the applicant, as he works full-time and would be unable to administer his son's albuterol treatments four times each day. *Id.*

Upon review, the applicant has not shown that her husband will endure extreme hardship should the present waiver application be denied. The applicant has established that her husband will suffer extreme hardship should he relocate to Nigeria with her and their children. The AAO recognizes that conditions in Nigeria are poor, including political instability and significant human rights violations such as politically motivated and extrajudicial killings by security forces, vigilante killings, abductions by militant groups, arbitrary arrest and prolonged pretrial detention, restrictions on freedom of speech, press, assembly, religion, and movement, official corruption and impunity, female genital mutilation (FGM), child abuse and child sexual exploitation, societal violence, and

ethnic, regional, and religious discrimination. *2009 Human Rights Report: Nigeria*, United States Department of State, dated March 11, 2010. The U.S. Central Intelligence Agency estimated that 70 percent of residents of Nigeria lived below the poverty line in 2007. *United States Central Intelligence Agency World Factbook: Nigeria*, updated June 1, 2010. Accordingly, it is evident that the applicant's husband would face challenging conditions in Nigeria that would likely create significant direct hardship.

The applicant's husband has resided in the United States for approximately 28 years, and it is evident that he would endure hardship should he now return to Nigeria. He would be compelled to relinquish his employment and find a position in Nigeria.

The applicant's husband references hardships that would be experienced by his and the applicant's children in Nigeria. Direct hardship to an applicant's children is not a basis for a waiver under section 212(i) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. The AAO recognizes that the applicant's children would face harsh conditions in Nigeria, and that their challenges and lost opportunities in the United States would create additional hardship for the applicant's husband.

Considering all elements of hardship to the applicant's husband in aggregate, should he relocate to Nigeria to maintain family unity, he will endure extreme hardship.

However, the applicant has not established that her husband will suffer extreme hardship should he remain in the United States without her. Counsel asserts that the applicant's husband has a phobia that prevents him from driving more than short distances. However, the applicant's husband has not made reference to this alleged phobia or indicated that it impacts his ability to engage in travel. Further, the applicant has not provided any documentation, such as a report from a psychologist or medical professional, to support that her husband has been diagnosed with a phobia that impacts his life. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant'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). It is noted that the applicant entered the United States in May 2005, and her husband has not asserted that he had difficulty engaging in transportation prior to her arrival and assistance.

Counsel asserts that the applicant's son has a pulmonary illness that requires a physician's care and albuterol treatments. However, the applicant has not provided any documentation such as medical reports to support this assertion. Thus, the applicant has not shown that her son has health problems, or that her husband would face additional difficulty due to his children's medical needs.

The applicant has not stated or shown that her husband would face financial obligations that cannot be met with his \$42,000 annual compensation, such that he would endure economic hardship in her absence.

The applicant's husband provided that he would face hardship should he be compelled to act as a single parent for his two children. The AAO acknowledges that caring for two young children as a

single parent presents significant challenges. Yet, the applicant has not shown that her husband's parenting responsibilities would constitute unusual circumstances that are not commonly faced when spouses reside apart due to inadmissibility.

The applicant's husband expresses that he loves the applicant and that he wishes to reside with her in the United States. The record supports that the applicant's husband will endure significant emotional hardship should he be separated from the applicant. His hardship will be compounded by the challenges suffered by his two children. Further, the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act will continue indefinitely if she does not obtain a waiver under section 212(i) of the Act. Thus, should the present waiver application be denied, the applicant's husband would lack the opportunity to be unified with her unless he endures the extreme hardship of relocating to Nigeria. It is evident that facing the possibility of permanent family separation would significantly contribute to the applicant's husband's emotional distress.

Federal court and administrative 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.

The AAO has considered the presented emotional consequences carefully to determine whether the applicant has distinguished her husband's psychological difficulty from that which is commonly experienced when families reside apart due to prior violations of U.S. immigration law. The AAO has further considered all elements of hardship to the applicant's husband, should he remain in the United States, in aggregate. However, based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will face extreme hardship should she depart the United States and he remain.

An applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, and should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). As the applicant has not shown that her husband will face extreme hardship should he remain in the United States, she has not established that denial of the present waiver application "would result in extreme hardship," as required 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 she merits a waiver as a matter of discretion.

In proceedings regarding a waiver of grounds of inadmissibility under section 212(i)(1) 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.