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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

[redacted]

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FILE: [redacted] Office: ATLANTA, GA Date: FEB 05 2010

IN RE: [redacted]

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:

[redacted]

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.

Michael Shumway

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Atlanta, Georgia. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be granted and the appeal sustained.

The applicant is a native and citizen of Nigeria who was found 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 having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. 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 his U.S. citizen spouse.

The record reflects that on November 30, 2004, during the applicant's adjustment interview, he admitted that on September 14, 1994, he used a false passport and visitor visa to procure entry into the United States.

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.

The AAO notes that section 212(i) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relative that qualifies is the applicant's spouse. Hardship to the applicant is not considered under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

The AAO notes that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[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." (Citations omitted). Although the present case did not arise in the Ninth Circuit, separation of family will be given appropriate weight in the assessment of hardship factors.

The AAO notes further, however, that 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant to Nigeria and in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

In a decision dated January 19, 2005, the district director concluded that the applicant was ineligible for the waiver sought.

In a brief dated February 17, 2005, counsel asserted on appeal that the applicant's spouse would suffer extreme hardship as a result of the departure of the applicant from the United States.

In a decision dated July 19, 2006, the AAO found that the applicant's spouse established that she would suffer extreme hardship as a result of relocating to Nigeria because it would force her to be separated from her four children—she was then working to regain her parental rights to them; because relocating would complicate her health conditions; and because of the country conditions in Nigeria. The AAO found that the 2005 State Department Human Rights Report for Nigeria stated that the government's human rights record remained poor and there was violence and discrimination against women.

However, the AAO did not find that the applicant established that his spouse would suffer extreme hardship as a result of separation. On appeal, counsel stated that the applicant's spouse relied on the applicant emotionally, physically and financially. In a statement dated February 5, 2005, the applicant's spouse stated that she had been in prior abusive relationships and the applicant had taught her acceptance, understanding, and patience.

Moreover, the record on appeal indicated that the applicant's spouse had medical problems that interfered with her ability to work, but did not indicate whether these problems were long-term or could be remedied in a short time period. A Medical Leave Statement dated November 8, 2004, showed that the applicant's spouse took medical leave from work in order to care for her mother. In her statement she asserts that on December 1, 2004 she returned to work and on December 15, 2004 she was taken to the hospital for chest pains and difficulty breathing. This statement also indicated that on December 28, 2004, the applicant took his spouse to the emergency room with the same symptoms, and on January 25, 2005 the applicant's spouse went to see a cardiologist, [redacted] The record on appeal stated that [redacted] thought that the applicant's spouse may have suffered a mild stroke, but more tests would need to be done before a final conclusion could be made. The applicant's spouse submitted an undated note from [redacted] which stated that the testing would be performed in two weeks and if the tests were okay then the applicant's spouse could return to work. On appeal no further evidence as to the applicant's spouse's condition was submitted. Thus, the documents submitted on appeal showed that the applicant's spouse was at that time unable to work and was fully relying on the applicant for financial, emotional and physical support, but did not reflect that the applicant's spouse was permanently unable to return to work and would continue indefinitely to rely on the applicant for support.

In his motion to reconsider dated August 18, 2006, counsel states that the applicant's spouse has a heart condition, which is permanent. Counsel submits a letter dated November 2, 2007 from the applicant's spouse's cardiologist, [redacted], which states that the applicant's spouse has an existing heart condition which does not allow her to return to work because any symptoms of chest pain can lead to a minor or severe stroke. Thus, the AAO now finds that the applicant's spouse would experience extreme hardship as a result of being separated from the applicant and that the applicant has established that his spouse would suffer extreme hardship as a result of his inadmissibility.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of

equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors·evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *Id.* at 300. (Citations omitted).

The adverse factor in the present case is the applicant's use of fraudulent documents to gain admission into the United States.

The favorable factors in the present case are the extreme hardship to his U.S. citizen wife if he were to be denied a waiver of inadmissibility; the applicant's record of employment, payment of taxes and financial support of his family; and the applicant's lack of a criminal record or offense.

The AAO finds that the immigration violation committed by the applicant is serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the motion to reconsider is granted and the appeal will be sustained.

ORDER: The motion to reconsider is granted and the appeal is sustained.