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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: ACCRA, GHANA

Date:

MAR 10 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) and section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 waiver application was denied by the Field Office Director, Accra, Ghana. The matter 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 having attempted to procure admission into the United States by fraud or willful misrepresentation and under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure. The applicant is married to a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The Field Office Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the Field Office Director*, dated February 13, 2009.

On appeal, the applicant states that his absence from the United States has caused a great hardship to his spouse and himself. *Form I-290B, Notice of Appeal to the Administrative Appeals Office, and Statement from the Applicant*, dated March 12, 2009.

In support of these assertions, the record includes statements from the applicant; medical records for the applicant and his spouse; employment letters for the applicant and his spouse; tax statements for the applicant and his spouse; apartment leases; telephone bills; and a bank statement. The entire record was reviewed and considered in rendering a decision on the appeal.

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(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present case, the record indicates that the applicant initially entered the United States on July 16, 1993. *Warrant of Removal/Deportation*, dated August 17, 2005. The applicant attempted to gain admission to the United States on June 15, 1994 using a British passport in another name. *Form I-213, Record of Deportable/Inadmissible Alien*, dated August 10, 2005; *Copies of British passport and Form I-94W; Record of Sworn Statement*, dated June 15, 1994. On July 27, 1994, an Immigration Judge ordered the applicant excluded from the United States. *Decision of the Immigration Judge*, dated July 27, 1994. The applicant did not depart the United States. On October 17, 1997 the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. *Form I-485*. While the Form I-485 application was originally denied on April 22, 2003, it was reopened on August 19, 2004. *Decision of Interim District Director*, dated April 22, 2003; *Decision of District Director*, dated August 19, 2004. On August 17, 2005 a Warrant of Removal/Deportation was issued to the applicant stating that he was to be removed from the United States on August 31, 2005. *Warrant of Removal/Deportation*, dated August 17, 2005. The applicant currently resides in Nigeria. *Form I-601, Application for Waiver of Grounds of Inadmissibility*. As the applicant attempted to gain admission through the use of a false passport, he is inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

The applicant also accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until October 17, 1997, the date he filed the Form I-485

application. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining the bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, et al.*, dated May 6, 2009. The applicant departed the United States on August 31, 2005. The applicant is therefore inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I), for being unlawfully present in the United States for a period of more than 180 days but less than one year. Pursuant to section 212(a)(9)(B)(i)(I), the applicant was barred from again seeking admission within three years of the date of his departure. The applicant's departure from the United States occurred on August 31, 2005. Therefore, it has been more than three years since the departure that raised the inadmissibility issue. A clear reading of the law reveals that the applicant is no longer inadmissible as he is not seeking admission (in this case, through his Form I-485 application) within three years of his initial departure. Based on the current facts, he does not require a waiver of inadmissibility based on his prior unlawful presence.

A section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) of the Act and a section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of section 212(a)(9)(B)(i)(II) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant would experience as a result of his inadmissibility is not directly relevant to the determination as to whether he is eligible for a waiver. The only directly relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. Hardship to a non-qualifying relative will be considered to the extent that it affects the applicant's spouse. If 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a 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 the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse joins the applicant in Nigeria, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Birth*

certificate. The applicant states that he is experiencing financial hardship in Nigeria and that his spouse's relocation to Nigeria would, therefore, be disastrous for her. While the AAO notes this claim, it does not find the record to support it. The record contains no documentary evidence of the applicant's financial circumstances. Further, it fails to document, through published country conditions reports, the economic situation in Nigeria, the cost of living or that the applicant and his spouse would not be able to find employment in Nigeria to support themselves. 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 does include medical documentation showing that the applicant's spouse was diagnosed with benign essential hypertension, asthma, and acute bronchitis on February 24, 2009. *Medical records for the applicant's spouse, St. Louis County Health*, printed on March 13, 2009. However, the applicant has failed to submit evidence that his spouse would be unable to receive treatment for her conditions in Nigeria. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Nigeria.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in the United States. *Birth certificate*. The applicant states that he and his spouse have medical conditions, and that his spouse has been suffering from high blood pressure as a result of his absence from the United States. *Statement from the applicant*, dated March 12, 2009. The record contains a letter from a physician who indicates that the applicant has been diagnosed with hypertension and that, despite medication, his anxiety, stress and loneliness, have made it difficult to control his blood pressure. *Letter from* [REDACTED] dated March 17, 2008. However, as previously noted, hardship experienced by an applicant as a result of his or her inadmissibility is not considered in waiver proceedings except to the extent that it creates hardship to the qualifying relative. In the present case, the record fails to establish how the applicant's health problems affect his spouse.

Medical documentation in the record shows that the applicant's spouse has been diagnosed with benign essential hypertension, asthma, and acute bronchitis. *Medical records for the applicant's spouse, St. Louis County Health*, printed on March 13, 2009. While the AAO acknowledges these medical conditions, it notes that there is no documentation in the record that confirms the applicant's assertions that his spouse's conditions are a result of their separation. Neither does it indicate how these conditions impair or limit her ability to function independently. The applicant also states that the forced separation has caused his spouse to suffer deep emotional problems. *Statement from the applicant's spouse*, received February 23, 2009. The record, however, fails to include documentation from a licensed healthcare professional to demonstrate how being separated from the applicant has affected the applicant's spouse on a psychological level. Going on record without supporting documentary evidence will not meet the burden of proof of 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 applicant also notes that while he lived in the United States, he was the major income earner in his family and that, in his absence, his spouse has been suffering and has had to stay with family friends. *Statements from the applicant's spouse*, dated

March 12, 2009. The record includes several apartment leases and telephone bills for the applicant and his spouse showing various expenses, as well as bank statements, tax statements and an employment letter for the applicant's spouse showing her salary as \$36,000.00 per year in 1997. *See apartment leases, telephone bills, bank statements, tax statements, and an employment letter.* While the AAO acknowledges this documentation, it notes there is nothing in the record that demonstrates that the applicant's spouse is experiencing financial hardship or that the applicant is unable to contribute to his family's financial well-being from a location other than the United States. As previously noted, the record fails to include documentation, such as published country conditions reports, regarding the economy and the availability of employment in Nigeria.

The AAO acknowledges the difficulties faced by the applicant's spouse. However, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of her separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of removal or exclusion. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) and section 212(a)(9)(B) 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.