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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

MAY 13 2003

FILE: AAO 03 041 50002 Office: ACCRA, GHANA Date:

IN RE: Applicant: [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)

PUBLIC COPY

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

MAY1303_02H2212

DISCUSSION: The waiver application was certified for review by the Officer in Charge, Accra, Ghana, and is now before the Administrative Appeals Office (AAO) on a notice of certification. The decision will be affirmed.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(9)(B)(i)(II). The applicant is married to a United States citizen, and she is the beneficiary of an approved petition for alien relative. She seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v), so that she may reside with her husband in the United States.

The officer in charge (OIC) concluded that the applicant had failed to establish that extreme hardship would be imposed upon her United States citizen spouse. The decision was subsequently submitted to the AAO for certification. The applicant submitted no additional information or evidence to the AAO on certification.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who -
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> . . . .
>
> (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.
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> . . . .
>
> (v) Waiver. - The Attorney General 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 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. No court shall have jurisdiction to

> review a decision or action by the Attorney General regarding a waiver under this clause.

Section 212(a)(9)(B), which was added to the Act through the enactment of section 301 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), applies to all cases of unlawful presence that occur *after April 1, 1997*. Based on the evidence in the record, the applicant's unlawful presence in the U.S. occurred between 1981 and 1986. The applicant subsequently returned to Nigeria and has lived there continuously from 1986 until the present. Based on the above factors, the OIC erred in finding the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act.[1]

The applicant was additionally found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. Section 212(a)(6)(C)(i) of the Act states 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.

The evidence in the record indicates that the applicant willfully misrepresented the fact that she was convicted of a crime involving moral turpitude on her Application for Immigrant Visa and Alien Registration form (application). Question #33 of the application states, in pertinent part:

> [Y]ou should read carefully the following list and answer yes or no to each category. The answers you give will assist the consular officer to reach a decision on your eligibility to receive a visa. Except as otherwise provided by law, aliens within the following classifications are ineligible to receive a visa
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> . . . .
>
> (b) An alien convicted of, or who admits committing a crime involving moral turpitude
>
> . . . .

The applicant clearly answered "no" to question #33(b) of the application. However, FBI and Maryland State Court records obtained by the OIC reflect that on May 17, 1985, the applicant

[1] It is noted that the applicant sought admission to the U.S. more than 10 years after the date of her departure from the United States. Thus, even if section 212(a)(9)(B)(i)(II) had been applicable to her case, the applicant would not have been inadmissible to the U.S. pursuant to this section of the Act.

was convicted in the State of Maryland of the crimes of theft and common law assault. "[L]awful admission . . . is not available to aliens who have committed a crime of moral turpitude which includes theft." *United States v. Villa-Fabela,* 882 F.2d 434, 440 (9th Cir. 1989). "Theft has always been held to involve moral turpitude, regardless of the sentence imposed or the amount stolen." *United States v. Esparza-Ponce,* 193 F.3d 1133, 1136 (9th Cir. 1999) *citing Soetarto v. INS,* 516 F.2d 778, 780 (7th Cir. 1975). The applicant is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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

> (1) The Attorney General may, in the discretion of the Attorney General, 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 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 applicant has failed to establish that her husband, Mr. [redacted], would suffer extreme hardship if she is not granted a waiver of inadmissibility. In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-566 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien had established extreme hardship pursuant to section 212(i) of the Act. The factors included 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.

In *Cervantes-Gonzalez,* the BIA additionally noted that the alien's wife knew her husband was in deportation proceedings at the time they were married. The BIA found that the knowledge at

the time of their marriage, that she might have to face a decision of parting from her husband or following him to his country if he were ordered deported, was a factor that undermined the alien's extreme hardship argument. *Id.*

In this case, the applicant asserts that Mr. [redacted] will suffer emotional, physical and financial hardship if she is unable to join him in the United States. In support of this assertion, the applicant submitted an affidavit from her husband stating that he needs his wife's love, affection and in-house support, and that not living together takes a heavy toll on his health and mental well-being everyday. The affidavit states that Mr. [redacted] will suffer additional emotional hardship because he worries about his wife's safety in Nigeria. *See Letter by* [redacted], dated April 3, 2000.

The evidence in the record indicates that both Mr. [redacted] and the applicant are natives of Nigeria. After spending about 5 years in the U.S. between 1981 and 1986, the applicant departed the U.S. and continuously resided in Nigeria, apart from Mr. [redacted] The record indicates further that Mr. [redacted] and the applicant were not married until January 9, 1997, more than ten years after the applicant's departure from the United States, and that the marriage took place in Nigeria. Clearly, Mr. [redacted] knew at the time of their marriage that he might have to live apart from his wife or face the decision of moving to Nigeria to be with her.

Mr. [redacted] has not established that he has any family ties in the United States. The record reflects that he and the applicant have four children born between 1982 and 1987. Three of the children were born in the U.S., however they live in Nigeria and would remain in Nigeria if the applicant moved to the U.S. The couple's youngest child is about 15-years-old, and based on the record she has never lived outside of Nigeria. The applicant asserts that Mr. [redacted] will suffer financial hardship if she is not granted a waiver of inadmissibility. This assertion is unsubstantiated, as the evidence in the record reflects that the applicant is gainfully employed as a teacher in Nigeria and no evidence documenting Mr. [redacted] financial hardship was submitted. The record is equally void of evidence to substantiate that conditions in Nigeria are dangerous and constitute an extreme hardship to Mr. [redacted] Moreover, the applicant's assertion of mental and physical hardship is not documented and is not otherwise supported by any evidence in the record.

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). *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), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit 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.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* § 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met her burden. Accordingly, the appeal will be dismissed.

ORDER: The OIC decision is affirmed.