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U.S. Citizenship and Immigration Services

FILE: Office: BALTIMORE, MD Date: JAN 20 2004

IN RE:

PETITION: 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 PETITIONER:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland 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 last admitted to the United States on July 30, 1988, as a nonimmigrant visitor. He overstayed the valid duration of his visa. The applicant married a U.S. citizen on June 14, 1994 and became the beneficiary of an approved immediate relative visa petition on February 10, 1995. On May 2, 1995, the applicant filed an Application to Register Permanent Status or Adjust Status (Form I-485). That application was denied on the ground that the applicant submitted a fraudulent birth certificate in support of the application. The applicant 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 sought to procure a visa or other documentation by fraud or willful misrepresentation. On July 30, 1996, the applicant filed his first Application for Waiver of Grounds of Inadmissibility (Form I-601). The District Director, Baltimore, Maryland, denied the application and an appeal was subsequently dismissed by the AAO. 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, children and stepchildren.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See* Decision of the Acting District Director, dated November 12, 2002.

On appeal, counsel states that the Immigration and Naturalization Service [now Citizenship and Immigration Services] erred by failing to emphasize that all relevant factors in the applicant's case must be considered both individually and cumulatively. Counsel asserts that, taken as a whole, the factors in the application can and do rise to the level of extreme hardship.

The record includes an affidavit of the applicant's spouse, dated December 10, 2002; an affidavit of the applicant, dated April 22, 2002; letters verifying the employment of the applicant and his spouse, dated April 17 and 22, 2002, respectively; medical records for the applicant's spouse, children and stepchildren; various documentation verifying the birth of the applicant; copies of the U.S. birth certificates for the applicant's spouse and children; a copy of the marriage certificate for the applicant and his spouse; copies of financial documents and income tax returns for the couple and affidavits of support. The entire record was considered in rendering this decision.

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.

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 alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's wife. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) 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 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. 22 I&N Dec. at 565-566.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of departing from the United States as the applicant's spouse has lived her entire life in the United States; her entire family resides in the United States; she only speaks English; she has an established, lucrative career in the United States and she requires the health care available to her in this country. *See* Appeal from Decision on Application for Waiver of Excludability, dated December 10, 2002.

However, counsel does not establish extreme hardship to the applicant's wife if she remains in the United States thereby maintaining her close familial relationships, productive career, access to required medical care and active participation in her church community. The AAO notes that as a U.S. citizen, the applicant's spouse is not required to leave the United States as a result of the adjudication of the applicant's waiver. While counsel contends that the applicant's spouse will experience the hardship of losing the applicant's financial contribution, the record establishes that the applicant's spouse has been steadily employed on a full-time basis and is capable of providing for her family. *See* Letter from Westbrook Elementary School, dated April 22, 2002. Further, the record does not establish that the applicant cannot continue to provide financial support to his spouse and children from a location outside of the United States. The AAO acknowledges that the applicant's spouse may not be able to advance her education in the manner or at the speed currently employed without the applicant's presence, but a finding of extreme hardship cannot be based on this fact alone.

Counsel asserts that the applicant is the sole provider for his spouse's health needs. *See* Affidavit of [redacted] dated December 10, 2002. However, the record does not document the nature and extent of his provision. The applicant's wife states that she suffers from several ailments including "Hiatus Hernia, Morbid Obesity and depression." *Id.* However, the record does not reveal a course of treatment for these illnesses beyond the claims of the applicant and his wife and one medical form verifying treatment from the health care provider of the applicant's wife. *See* Kaiser Permanente Form, dated April 12, 2002. The record establishes that a daughter of the applicant's wife suffers from asthma. However, the record does not establish that the applicant provides any specialized care in treating the condition.

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. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from her husband. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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.