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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: DENVER, CO Date: JUN 2 2004

IN RE: [redacted]

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:

[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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Denver, Colorado, 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 having procured entry into the United States by fraud or willful misrepresentation in 1997. The applicant is married to a naturalized U.S. citizen and 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 and children.

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 for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated July 18, 2003.

On appeal, counsel asserts that the district director failed to properly evaluate the totality of the circumstances that apply to the applicant and erred in his evaluation of the severity of the hardship imposed on the applicant's wife and two children if the applicant is returned to Nigeria. *Form I-290B*, dated August 15, 2003.

In support of these assertions, counsel submits an affidavit of the applicant's wife; an affidavit of the applicant; a psychological evaluation performed by a licensed clinical psychologist; copies of the United States birth certificates of the applicant's children; letters from church and preschool administrators; copies of family photographs; letters from physicians and health professionals regarding the medical condition of the applicant and his family; a statement of the aunt of the applicant's wife and reports, letters and maps addressing economic and social conditions in Nigeria. The entire record was reviewed and 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.

The record reflects that, in 1997, the applicant presented a passport containing a B-2 visa belonging to a cousin to obtain entry to the United States.

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 spouse. 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, 565-566 (BIA 1999) provides a list of factors the Bureau 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 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.

Counsel asserts that the applicant's spouse would suffer extreme hardship if she relocated to Nigeria to remain with the applicant. Counsel provides statements from the applicant and his spouse as well as the aunt of the applicant's spouse to support the contention that the family of the applicant's spouse has disowned her and will cause her and her husband harm if they return to Nigeria. *See Affidavit of Janevera Idika*, dated September 23, 2003. *See also Affidavit of Chuks Idika*, dated September 23, 2003. Further, counsel contends that the applicant's daughter would be subjected to female circumcision if the family returned to Nigeria. *See Letter from Osita G. Afoaku, PhD*, dated September 14, 2003. In addition, counsel contends that the medical condition of the applicant's daughter and wife would suffer in Nigeria owing to lack of adequate care. *See Letter from Roxann Headley, MD*, dated August 18, 2003 (stating that the applicant's daughter experiences wheezing and ear infections as well as premature thelarche). The AAO notes that the high risk factors associated with the pregnancy of the applicant's spouse are temporary and the record does not establish health issues of the applicant's spouse that could not be treated in Nigeria.

The record does not establish that the applicant's wife would experience extreme hardship if she remains in the United States maintaining access to adequate health care, safety and security for her children and distance from her family. Counsel contends that the applicant's spouse will suffer financial hardship if the applicant is denied a waiver of inadmissibility to the United States. The record does not establish that the applicant's wife is unable to work to financially support her family. On the contrary, the applicant's wife is trained as a nurse and ceased working owing to complications with her pregnancy. *Affidavit of Chuks Idika* (stating "my wife experienced so many difficulties with her pregnancy that she was forced to quit her job"). The record does not establish that the applicant will be unable to provide financially for his family from a location outside of the United States beyond generalized assertions by the applicant that he would earn less in Nigeria than he currently earns in the United States. *Id.* The AAO recognizes that the income of the applicant's spouse alone may not cover all of the current family expenses, however 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.

Counsel also asserts that the applicant's spouse is mentally unable to raise her children in the absence of the applicant. Counsel offers a psychological evaluation to support this assertion. The AAO notes that the evaluation does not indicate an ongoing relationship between the licensed clinical psychologist compiling the evaluation and the applicant's spouse. *Psychological Evaluation of Kathleen Henken, PsyD*, dated August 13, 2003. The record does not establish a course of treatment for the applicant's spouse or the extent of the depression indicated. The observations of a mental health professional in a one time meeting with the applicant and his spouse standing alone do not amount to sufficient evidence to warrant a finding of extreme hardship.

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 spouse will endure hardship as a result of separation from the applicant. 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 based on the record.

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(a)(6)(C) 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.