U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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DATE: MAY 13 2011 Office: ACCRA, GHANA FILE: [redacted]

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).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Nigeria who used a fraudulent passport in an attempt to obtain a visa to enter the United States. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). He is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on December 29, 2008.

On appeal, the applicant asserts the Field Office Director did not give sufficient weight to the evidence that was submitted, that the Field Office Director used the wrong legal standard in rendering the decision and that he has established his spouse would experience extreme hardship due to his inadmissibility. *Form I-290B*, received January 27, 2009.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (i) In general. 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 chapter is inadmissible.

The record reflects that the applicant presented a fraudulent passport when applying for a K-1 visa at the U.S. Embassy in London on June 23, 2006. The record contains conflicting statements from the applicant regarding how he obtained the fraudulent passport. The Field Office Director determined that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act and the applicant does not contest this on appeal.

The record includes, but is not limited to: a statement from the applicant; a statement from the applicant's spouse; a Memorandum in Support of Applicant's Waiver; an employment letter for the applicant's spouse; pay stubs and W-2 forms for the applicant's spouse; rental payment logs for the applicant's spouse; bank account statements for the applicant's spouse; phone bills, insurance and utility statements for the applicant's spouse; wire transfer receipts from the applicant's spouse to the applicant; hospital records for the applicant's spouse; a statement from [redacted] statements from friends and associates of the applicant's spouse; and photographs of the applicant and his spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

> (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 waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant or applicant's children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be

considered in analyzing hardship. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("[redacted] was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on a qualifying relative, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The AAO will first consider hardship upon relocation. Upon examination of the materials in the record the AAO notes that the applicant has not sufficiently articulated any basis of hardship if the applicant's spouse were to relocate to Nigeria. The previous assertion from the applicant's former counsel that every application for waiver implies a choice to reside in the United States is irrelevant. *Memorandum in Support of Applicant's Waiver*, dated November 3, 2008. When an applicant is inadmissible a waiver for the grounds of inadmissibility is only available based on the criteria established by statute, in this case extreme hardship to a qualifying relative. As noted above, an applicant must establish extreme hardship to a qualifying relative not only upon separation, if they remain in the United States, but also upon relocation abroad with the inadmissible family member. In this case, the applicant has made a single statement on the Form I-290B that his spouse would not

be able to work in Nigeria as a medication aid for a salary commensurate with what she could receive in the U.S. This is not supported by any objective evidence in the record and, even if established, would not be considered an uncommon hardship factor. The record fails to establish any hardship impacts upon the applicant's spouse if she were to relocate to Nigeria with the applicant.

With regard to extreme hardship upon separation, the applicant asserts his spouse will experience emotional, psychological and financial hardship if he is not allowed to reside with her in the United States. *Form I-290B*, received January 29, 2008. The applicant's former counsel previously asserted that the applicant's spouse is experiencing extreme emotional and psychological hardship, and as a result has experienced a miscarriage and irregular menstrual cycles. *Memorandum in Support of Applicant's Waiver*, dated November 3, 2008. He further explained that the applicant's spouse is experiencing financial hardship due to having to support the applicant in Nigeria as well as herself in the United States.

The applicant's spouse has submitted a statement reiterating former counsel's previous assertions, that the applicant's wife is experiencing emotional hardship resulting in a miscarriage and menstrual irregularities, and financial hardship from having to provide support for him financially in Nigeria. *Statement of the Applicant's Spouse*, dated July 25, 2008.

The applicant's spouse has submitted a statement asserting that her dreams of starting a family in the United States have been put on hold, and that she is suffering emotionally and financially due to separation from the applicant. *Statement of the Applicant's Spouse*, dated September 22, 2008. Specifically, she explains that she cannot afford the cost of travelling to Nigeria to visit the applicant and that she misses the emotional support and conjugal benefits of having her husband present, and that she fears continued anxiety and stress related to separation may result in damage to their marital bonds and cause her infertility problems.

The record contains hospital records related to an emergency room visit by the applicant's spouse in 2006. These documents are in raw medical form and are unclear as to whether the applicant's spouse was pregnant and suffered a miscarriage at or about the time she visited the hospital in 2006. The AAO is not qualified to interpret medical data, and as a result cannot presume facts or construct assertions based on submitted evidence unless it clearly and objectively states a conclusion or support for a particular assertion. The medical evidence is not sufficient to establish that the applicant's spouse experienced a miscarriage, or that it was related to separation from her husband and not some other condition.

The record also contains a brief statement from [redacted] dated February 14, 2008. In the letter [redacted] ates that anxiety due to separation *may* contribute to irregular menstrual periods, but that the condition must be further investigated. As above, this evidence is insufficiently probative to establish that the applicant's menstrual irregularity is a result of separation from the applicant. Nonetheless, the AAO will give due consideration to the applicant's fertility issues in making an overall determination of the hardship impacts to the applicant's spouse due to separation.

The applicant's spouse has asserted that she cannot afford to visit the applicant in Nigeria and is suffering financial hardship due to having to send money to him. An examination of the record reveals an employment letter, pay stubs, W-2 tax forms, utilities and bank statements, all of which corroborate assertions of the applicant's spouse's income level and her financial obligations. There are also wire receipts indicating that she sends money to the applicant in Nigeria. However, the AAO notes that the applicant's spouse states that the applicant is currently working in Nigeria. *Statement of the Applicant's Spouse*, dated July 31, 2008. There is no documentation which indicates that the applicant's spouse is unable to support herself financially. The AAO cannot determine that the applicant's spouse is unable to meet her own financial obligations, or that the applicant would be able to continue employment to relieve her financial strain if she were in the United States. Based on these observations, the record does not establish that she is experiencing any uncommon financial hardship as a result of separation from the applicant.

The record also contains letters from friends and associates of the applicant's spouse noting the emotional hardship of separation from her husband and also asserting that her miscarriage and fertility problems are caused by this separation. While the AAO acknowledges the sentiments of these letters, the record does not establish that the applicant's spouse is experiencing any emotional or psychological hardship which rises above that commonly experienced by the relatives of inadmissible aliens. The AAO recognizes that the applicant's spouse may experience some emotional hardship as a result of the applicant not being able to reside in the United States, but the applicant has failed to demonstrate that this hardship, even when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship articulated in this case, based on the evidence in this record, does not rise above the common result of removal or inadmissibility and thus does not constitute extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). 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.

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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *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.