identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H5

DATE: FEB 15 2012 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:

[redacted]

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 must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for

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 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her lawful permanent resident spouse and children.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Field Office Director,* dated September 25, 2009.

On appeal, counsel asserts extreme hardship of a familial, emotional and economic nature. See *Form I-290B*, Notice of Appeal or Motion, received October 22, 2009.

The record includes, but is not limited to: Form I-601 and denial letter; counsel's brief; two hardship letters; employment letter; marriage and birth documents; family photos; records pertaining to the applicant's December 2011 attempted U.S. entry, sworn statement, and removal; and the applicant's June 2008 visa application. 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.

The record reflects that on December 1, 2001, the applicant entered the U.S. presenting a passport with a counterfeit biographical page that includes a name and date of birth not her own. When confronted by immigration officials, the applicant continued to assert the counterfeit biographical information as her own and stated that she was traveling with her reverend husband for a church program. See *Signed Sworn Statement*, dated December 1, 2001. The applicant was determined to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i) and was expeditiously removed to Nigeria on the same date. The applicant does not contest these findings on appeal.[1]

[1] Counsel asserts concerning the applicant: "Upon her arrival, and under questioning, she immediately admitted her wrongdoing and was summarily removed from the United States." See *Form I-290*, received October 22, 2009.

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 the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. 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).

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 removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered

---

The AAO finds counsel's assertion unpersuasive as the applicant's *Signed Sworn Statement*, dated December 1, 2001, shows no evidence of recantation but rather that even after being informed that the biographical page was counterfeit the applicant claimed to have no knowledge despite having asserted the false biographical information as her own.

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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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.*, *Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The record reflects that the applicant's spouse is a 45-year-old native and citizen of Nigeria and lawful permanent resident of the United States. He states that after winning the diversity lottery and learning of the applicant's inadmissibility he chose to bring his three very young children to the U.S. with him in April 2009 because he did not want to ruin their opportunity to immigrate. See *Hardship Letter 1*, dated May 14, 2009. The applicant's spouse states that his youngest child has since returned to Nigeria to be with the applicant. See *Hardship Letter 2*, dated October 5, 2009. He states: "The emotional hardship of having to be separated physically for a prolonged and indefinite period of time may definitely lead to divorce of our marriage and

possibly impose threat to my live or death which I believe is beyond extreme hardship to any of us." *Id.* The applicant's spouse does not expound on his assertion regarding divorce or on the threat to his life or death, and the record contains no documentary evidence related thereto.

The applicant's spouse states that the cost of babysitters for his children while he works is "unsustainable and highly expensive to subscribe for $75-$100 per day." *Id.* No documentary evidence has been submitted in support of the costs asserted. 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)). In an *Employer's Letter*, dated March 3, 2009, Mo Ogbonna, Personnel Services, East, The Shell Petroleum Development Company of Nigeria Limited, asserts that the applicant's spouse is a Senior Production Technologist based in Port Harcourt, Nigeria who joined the company on December 7, 2005 and earns the equivalent of more than $110,000 U.S. dollars annually. The applicant's spouse states that he intends to find full-time employment in the United States, is highly skilled, and has a referral to Shell Oil in Southern California. See *Hardship Letter 1*, dated May 14, 2009. He states that he is temporarily living with a relative, will have to find housing for himself and his children, and believes it will be nearly impossible for him to care for the children without his wife, requiring childcare of approximately ten hours per day, five days a week. *Id.* Whether the applicant's spouse has since secured employment, housing, or childcare has not been addressed on appeal. He states that he would have to maintain a home for the applicant in Nigeria as she is a stay-at-home mother with "no significant employment skills." *Id.* The record contains no documentary evidence demonstrating the applicant's inability to work in Nigeria, no evidence of her expenses has been submitted, and whether other economic support is available for her has not been addressed. The applicant's spouse states that "using 100% child care services in the absence" of the applicant "implies over-dependence on third parties that would have full control of my children and home, especially during my absence periods that could run into days and weeks depending on schedules." *Id.* Counsel asserts that the applicant's spouse "would probably only spend a few hours" with his children due to his probable work schedule and that "his profession will probably require him to travel frequently." See *Counsel's Brief*, dated May 14, 2009. No documentary evidence has been submitted to support these assertions. While the AAO recognizes that costs for child care and supporting two households can be a financial challenge, the evidence in the record is insufficient to establish that the applicant's spouse would be unable to support himself, his children, and the applicant in her absence. In waiver proceedings, the evidentiary burden lies entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation-related hardship, the applicant's spouse states that travelling with his three children from Nigeria to America one or two times a year to maintain their lawful permanent

resident status would be highly expensive and would impact his workplace availability. See *Hardship Letter 2*, dated October 5, 2009. He states that this could lead to loss of job, income, perception by others, and associated antagonism from family. *Id.* The record contains no supporting documentary evidence. The AAO recognizes that the applicant's spouse would indeed risk his lawful permanent resident status were he to choose to return to Nigeria to be with the applicant. This is, however, a common hardship related to the inadmissibility of a family member.

Assertions have been made concerning hardship to the applicant's children. As discussed above, hardship to the applicant's children can be considered only insofar as it results in hardship to the applicant's qualifying relative – here the applicant's spouse. The applicant's spouse states that while his youngest daughter returned to the applicant in Nigeria, his "son and daughter currently in the USA are doing well in school and winning prizes as well as exhibiting great talents because of adequate exposure to quality life and education." See *Hardship Letter 2*, dated October 5, 2009. No documentary evidence has been submitted in this regard. The applicant's spouse states that he wants his children to experience the U.S. school system, healthcare system, and become U.S. citizens. See *Hardship Letter 1*, dated May 14, 2009. The applicant's spouse states that two kidnap incidents happened in his children's presence near their school in Nigeria in 2008. *Id.* He states that "there is very high chance of them being kidnap victims and the ransom for such is usually far reaching and could constitute extreme financial and emotional hardships to me." The record contains no documentary evidence related to the incidents asserted or country conditions in Nigeria. The AAO has, however, reviewed the U.S. State Department's *Nigeria Travel Warning*, dated January 12, 2012. While a risk of kidnapping, robbery, and other armed attacks is noted for several areas in the country, the evidence does not establish that the applicant's children would be likely kidnapping targets should they decide to relocate to Nigeria.

The evidence is insufficient to establish that relocation-related difficulties concerning the applicant's children are uncommon or extreme such that they will cause extreme hardship to the applicant's spouse.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including potential loss of lawful permanent resident status after having won the diversity lottery in 2009; the economic implications of traveling between Nigeria and the U.S. to maintain lawful status; work-related and emotional implications of such travel; and the emotional, social, and other implications of his children being unable to enjoy education and other benefits available in the United States. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if he were to relocate to Nigeria to be with the applicant.

The applicant has, therefore, failed to demonstrate the challenges her spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.