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

U.S. Citizenship and Immigration Services

[redacted]

H5

DATE: JAN 19 2012 Office: ACCRA, GHANA [redacted]

IN RE: [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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana. The matter 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 applying for immigration benefits in 2004 and 2006 using different identities. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with her spouse.

The Field Office Director concluded that the applicant failed to establish that a bar to her admission to the United States would result in extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated July 31, 2009.

The applicant's attorney indicated in the Notice of Appeal (Form I-290B) that the qualifying spouse is encountering financial and emotional hardships as a result of his separation from the applicant. In addition, the applicant's attorney contends that the qualifying spouse would suffer financial hardships, and would experience safety and other concerns relating to the country conditions in Nigeria if he relocated there to be with the applicant. The applicant's attorney also asserts that the qualifying spouse worships in a church in the United States and that he is extremely attached to it.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), Form I-290B, letters from the qualifying spouse, a letter from the qualifying spouse's church, a letter from the qualifying spouse's friend, a psychological evaluation of the qualifying spouse, a letter from the qualifying spouse's employer and a copy of his work identification, pay statements for the qualifying spouse, an internet article regarding unemployment in Nigeria, a death certificate (presumably for the applicant's mother), copies of pages from the qualifying spouse's passport, a naturalization certificate for the qualifying spouse, a marriage certificate, travel documentation regarding the qualifying spouse's trips to visit the applicant, a statement from the applicant, a criminal incident document, an approved Petition for Alien Relative (Form I-130), divorce documentation for the applicant and qualifying spouse and other evidence submitted in conjunction with Form I-130 and the Application for Immigrant Visa (Form DS-230). 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:

> (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:

> 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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. The applicant's husband 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).

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 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 AAO finds that the applicant has failed to establish that her qualifying spouse will suffer extreme hardship as a consequence of being separated from her. The applicant's attorney asserts that the qualifying spouse is suffering emotional and financial hardships due to his separation from the applicant. With regard to the financial hardship, the record contains documentation regarding the qualifying spouse's income and travel documents indicating the expense of his trips to visit the applicant. However, there was no information regarding the qualifying spouse's other expenses, whether his expenses exceed his income and whether such expenses, as compared to his income, make trips to visit the applicant prohibitive. Further, the applicant's attorney also contends that the qualifying spouse is providing full financial support to the applicant in Nigeria, but no evidence confirming such assertions was submitted. Assertions are evidence and will be considered. However, going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). As such, the applicant failed to provide sufficient evidence to establish that the qualifying spouse is suffering financial hardships as a result of his separation from the applicant. Further, with regard to the emotional hardships which the qualifying spouse is encountering, the record contains a letter from the qualifying spouse and a psychiatric evaluation. In his letter, the qualifying spouse states that he is experiencing "mental torture, ponderous emotional upset, excruciating economic hardship, frustrating social unfulfillment and depression which could lead to suicide." Although this provides some insight into the qualifying spouse's

feelings, his letter does not sufficiently explain the effect that the applicant's absence has had on his life, and does not demonstrate how what he is experiencing is beyond the experiences of other separated families. The psychiatric evaluation states that the qualifying spouse is moderately depressed and moderately anxious, and finds that he will suffer undue hardship should his wife remain in Nigeria. However, the psychiatric evaluation consists, in large part, of the psychologist quoting statements the qualifying spouse made in response to psychological test questions. The psychiatric evaluation, similar to the qualifying spouse's letters, provides very little detail regarding the types of emotional and psychological issues that are facing the qualifying spouse. Further, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any treatment plan for the conditions noted in the evaluation, to further support the gravity of the situation.

The applicant must also establish that her qualifying relative would suffer extreme hardship were he to relocate to Nigeria to be with the applicant. With respect to this criterion, the applicant's attorney contends that the qualifying spouse will suffer financial hardship in Nigeria because he will not be able to find employment and therefore will be unable to support himself or the applicant. The record contains letters from the qualifying spouse and one internet article indicating that unemployment in Nigeria is very high. However, while the article supports the fact that it may be difficult for the qualifying spouse to find a job in Nigeria, it is unclear whether the qualifying spouse will have a difficult time finding a job without having any information regarding his education or credentials. Further, although the applicant's attorney indicates that the applicant is fully supported by the qualifying spouse, there is no evidence in the record to confirm this assertion or to indicate whether the qualifying spouse has any of her own income or whether her family supports her as well. Moreover, the applicant's attorney makes no claims regarding the qualifying spouse's family ties to the United States, so it is unclear whether he or the applicant may have family in Nigeria who can assist them upon his relocation. Further, the applicant's attorney and the qualifying spouse also assert that the qualifying spouse has safety concerns were he to relocate to Nigeria. However, no evidence was provided to support such assertions. As aforementioned, assertions are evidence and will be considered. However, going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici* at 165. As such, the applicant has not met her burden of demonstrating that her qualifying spouse will suffer extreme hardship in the event that he relocates to Nigeria.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her United States citizen spouse as required under section 212(i) of the Act. 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.

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. 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.