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

(b)(6)

DATE: FEB 15 2013 OFFICE: WASHINGTON, DC FILE:

IN RE:

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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Washington, District of Columbia 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 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), for having procured admission to the United States through willful misrepresentation. The applicant is the wife of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, in order to remain in the United States to reside with her U.S. citizen husband.

The Field Office Director concluded that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and that the applicant failed to establish that the bar to admission would impose extreme hardship on her U.S. citizen husband, the qualifying relative, and denied the application accordingly. *Decision of Field Office Director,* dated April 2, 2011.

On appeal, counsel submits a brief, an affidavit from the applicant's husband, a psychological evaluation of the applicant's husband, and articles on country conditions in Nigeria. The record also includes, but is not limited to: hardship statements from the applicant's husband, tax and banking records, medical documents for the applicant and the applicant's husband's parents, and family photographs.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, which provides that:

> 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)(1) of the Act provides, in pertinent part:

> The [Secretary of Homeland Security (Secretary)] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [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....

In the present case, the record establishes that the applicant procured admission into the United States by using her sister's passport and visa. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through willful misrepresentation. Inadmissibility is not contested on appeal.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. citizen husband. 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).

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 of Immigration Appeals 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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 contains references to hardship the applicant's children and in-laws would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children and in-laws will not be separately considered, except as it may affect the applicant's qualifying relative.

The record, in the aggregate, does not establish that the applicant's husband will suffer extreme hardship upon relocation. On appeal, the applicant's husband states that he will suffer extreme financial and emotional hardship upon relocation to his native Nigeria with the applicant. Regarding financial hardship, the applicant's husband states that he will be unable to practice law in Nigeria without attending school for another three years, but the record does not contain evidence of the relevant laws regarding attorney licensure in Nigeria or other evidence of the applicant's husband's inability to support his family with his current credentials in Nigeria. The applicant's husband further states that it will cost over $30,000 to move his family and belongings to Nigeria. The record contains no supporting documents establishing the cost of relocation and the applicant's husband's inability to defray these costs.

The applicant's husband states that his elderly parents with their numerous medical ailments will relocate with the applicant and that the cost of health care and the presence of counterfeit medication in Nigeria will cause his parents' medical conditions to worsen and his financial obligations to increase. The record contains medical records for the applicant's husband's parents, but those records do not establish that both of his parents have ongoing medical needs that cannot be met in Nigeria. While the record does include country conditions information showing that

counterfeit medication is problematic in Nigeria, the record does not demonstrate that the costs or absence of comparable medical care and genuine medication in Nigeria will lead to the worsening of the applicant's husband's parents' medical conditions or an inability to meet these costs by the applicant's husband or his parents such as would cause the applicant's husband to suffer extreme hardship. The record also does not establish that the applicant's husband's parents are unable to stay in the United States while the applicant and her husband relocate to Nigeria.

Regarding emotional hardship upon relocation, the applicant's husband states that country conditions in Nigeria are generally unsafe with a high degree of civil unrest and rampant kidnapping. The applicant's husband states that he is worried about his family's health and safety with these country conditions. The record includes country conditions information showing that there is violent crime in Nigeria. However, the record, in the aggregate, does not contain sufficient evidence showing that the applicant's husband would suffer extreme hardship in the event of relocation to his native Nigeria.

The record also does not establish that the applicant's spouse would experience extreme hardship in the event of separation from the applicant. On appeal, the applicant's husband states that he will suffer extreme financial and emotional hardship upon separation from the applicant. Regarding financial hardship upon separation, the applicant's husband asserts that he will be unable to sustain his financial obligations without the support of the applicant in caring for their three children and his aging parents. The applicant's husband states that his obligations have increased as a result of his larger family and he now has to work longer hours to meet these obligations. While the record includes tax returns showing that the applicant's husband is self-employed as an attorney and he is the sole financial provider for the family, the record does not include evidence showing that other family members are unable to provide support with meeting childcare and eldercare responsibilities while the applicant's husband works. The record also does not include financial income and expense information for the applicant's husband's parents and there is no evidence showing that they are unable to meet their own financial and medical needs. The record does not contain sufficient evidence that the financial difficulties facing the applicant's husband rise to the level of extreme hardship in the event of separation from the applicant.

Regarding emotional hardship upon separation, the applicant's husband states that he will not be able to handle caring for his three children, his ailing parents and working without the help of the applicant especially since he has been suffering from anxiety since he received the applicant's waiver denial notice. The record includes a psychological evaluation in which the applicant's husband is diagnosed with Adjustment Disorder with Anticipatory Anxiety due to symptoms of significant anxiety and moderate stress, as a result of fear of separation from his children and wife. The psychological evaluation does not recommend follow-up psychological or medical treatment. The applicant's husband further states that he and the applicant have no immediate family ties to Nigeria as all of their immediate family members reside in the United States or other countries. However, the record does not include evidence of the applicant's husband's family ties in the United States other than his parents and children. The record also does not show an inability to maintain family ties after relocation through telephone, mail or in-person visits. While the evidence shows that the applicant's husband is experiencing some emotional distress, the present

record is insufficient to show that separation from the applicant would negatively impact her husband's mental health to the extent that he would suffer extreme emotional or medical hardship.

Considered in the aggregate, the evidence does not demonstrate that the hardships suffered in this case have risen beyond what is normally experienced by families dealing with removal or inadmissibility. Consequently, the applicant has failed to establish extreme hardship to her qualifying relative as required for a waiver of his inadmissibility 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 she merits a waiver as a matter of discretion.

In proceedings for a 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.