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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: SEP 0 6 2013 Office: LAS VEGAS FIELD OFFICE [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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Las Vegas, Nevada, denied the waiver application and 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 procuring admission to the United States through fraud or misrepresentation. The record reflects that the applicant entered the United States in April 2010 with a fraudulent G-2 visa[1]. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States.

The field office director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated January 29, 2013.

On appeal counsel for the applicant contends that the qualifying spouse would suffer extreme hardship as a consequence of the applicant's inadmissibility[2]. On appeal counsel submits a brief; financial documentation; and letters from friends of the applicant. The record also contains a declaration from the applicant's spouse; additional financial information; and country information for Nigeria. 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 that:

> 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.

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[1] On appeal counsel cites legal cases discussing lawful admission to the United States, but does not contest the finding that the applicant entered the United States through fraud or misrepresentation.

[2] On appeal counsel refers to a waiver under section 237(a)(1)(H)(i), which is in the context of removal proceedings. In the instant case the applicant is not in removal proceedings.

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 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).

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. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (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.

On appeal counsel contends that the applicant's spouse would be emotionally devastated if the applicant is removed from the United States and that she has started therapy through a certified psychologist. Counsel further asserts that the spouse fears relocating to Nigeria and submits U.S. Department of State country information for Nigeria.

In her affidavit the applicant's spouse states that she and the applicant have a deep emotional attachment and that she would be emotionally devastated if the applicant is removed from the United States. She states that they frequently visit family, entertain friends, and cook together, and that the applicant attends her sons' footballs games and occasionally gives them spending money. She states that because she and the applicant share living expenses she would suffer financially if the applicant is removed. The applicant's spouse states that she does not like how the Nigerian government treats its people as she has seen on the Internet. She states that she fears the lack of a support system for women in Nigeria and that her sons would not adjust to the school system and culture. The spouse states that she also fears the lack of electrical power, water heaters, and indoor plumbing as well as unsanitary drinking water in Nigeria. She states that she fears the lack of basic living necessities that she is accustomed to in the United States and states that having always lived in the United States it would be traumatic for her and her sons to move.

The AAO finds that the record fails to establish that the applicant's qualifying spouse would suffer extreme hardship as a consequence of being separated from the applicant. The applicant's spouse states she would be emotionally devastated if the applicant is removed and counsel asserts the spouse has started therapy, but no documentation from a therapist has been submitted. Moreover, the applicant failed to provide any detail or supporting evidence explaining the exact nature of the qualifying spouse's emotional hardships and how such emotional hardships are outside the ordinary consequences of removal. The assertions made by the applicant's spouse and counsel regarding the spouse's emotional hardships have been considered. However, assertions cannot be given great weight absent supporting evidence. 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)).

The applicant's spouse states that she would suffer financially if the applicant is removed. The record contains a joint 2012 tax return and a 2012 rental agreement. The record also contains a Form G-325 Biographic Information signed by the applicant's spouse indicating she was unemployed in 2012. As no documentation has been submitted establishing the spouse's current income, expenses, assets, and liabilities or her overall financial situation, or the applicant's financial contribution, and there is no indication that the spouse is unable to work, the information in the record is insufficient to establish that without the applicant's physical presence in the United States the applicant's spouse would experience financial hardship. Further, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The AAO recognizes that the applicant's spouse would 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 removal and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's spouse would face as a result of her separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

The AAO also finds the record fails to establish that the applicant's spouse would experience extreme hardship if she were to relocate to Nigeria to reside with the applicant. The applicant's spouse states that she fears how the Nigerian government treats people and the lack of the basic necessities to which she is accustomed. Evidence on record does not support this hardship as it is general in nature and fails to address where the applicant would live if he returned to Nigeria. A 2010 affidavit from a cousin of the applicant states the applicant was born in Delta state, and U.S. Department of State country information submitted by counsel advises U.S. citizens to avoid all but essential to travel to certain states, including Delta. However, other documentation in the record indicates the applicant was residing the Federal Capital Territory. As the record does not indicate how conditions would specifically affect the applicant's spouse, it fails to establish that the applicant's spouse would experience extreme hardship were she to relocate.

Counsel and the applicant's spouse make reference to the hardship the applicant's stepchildren 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 stepchildren will not be separately considered, except as it may affect the applicant's spouse. The AAO notes that in a 2012 joint tax return no dependent children are identified nor are they listed on the I-130 petition submitted by the applicant's spouse. The spouse's 2011 tax return identifies a niece and nephew as dependents, but does not list her sons. As the record contains no documentation to establish the ages of the spouse's sons or with whom they reside, the AAO is unable to determine any hardship to the applicant's spouse related to her sons.

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 his qualifying 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 application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.