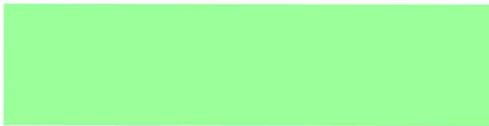




U.S. Citizenship
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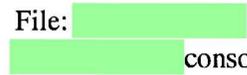
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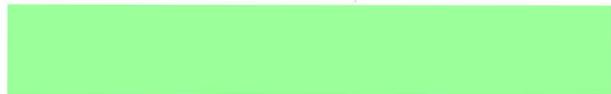
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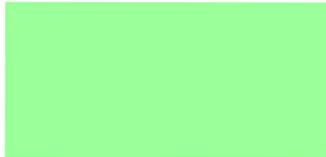
consolidated therein)

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:



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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Houston, denied the waiver application. The applicant, appealed the Field Office Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. The matter is now before the AAO on motion. The motion is granted, the prior AAO decision is withdrawn, and the underlying appeal is sustained.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The Field Office Director concluded the applicant failed to establish extreme hardship would be imposed on a qualifying relative upon the applicant's removal from the United States and denied his Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. We dismissed the applicant's appeal and affirmed the Field Office Director's decision.

On motion, counsel asserts the applicant's family never intended to go to Nigeria, as his U.S. citizen wife has many serious health issues that require her to stay in the United States for treatment; and his disabled stepdaughter, who also requires medical care in the United States, "would not be able to survive Nigeria [because] the social stigma of her disability would be unbearable." *See Form I-290B, Notice of Appeal or Motion*, dated May 6, 2013; *see also Brief Submitted in Support of Motion*.

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). As the applicant has submitted new documentary evidence to support his claim, the motion to reopen will be granted.

In addition to the evidence described in our previous decision, the record also includes, but is not limited to: affidavits by the applicant, his spouse, and children; documents about conditions in Nigeria; and photographs. The entire record was reviewed and considered in rendering a decision on the applicant's motion.

Section 212(a)(2)(A) of the Act provides, in relevant part:

- (i) In general.- ... any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
 - (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The record reflects the applicant was convicted of Theft, Misdemeanor B on August [REDACTED] and sentenced to six months of probation, which he completed on March [REDACTED] and fined \$2,000. The record also reflects the applicant was convicted of Theft, Misdemeanor B on June [REDACTED] and

sentenced to three days in jail and fined \$300 plus court costs. He therefore is inadmissible under section 212(a)(2)(A)(i) of the Act for having been convicted of two crimes involving moral turpitude. The applicant does not contest this finding of inadmissibility.

Section 212(h) of the Act provides, in relevant part:

(h) Waiver of Subsection (a)(2)(A)(i)(I) ... - The Attorney General [now Secretary of Homeland Security (Secretary)] may, in his discretion, waive the application of subparagraph (A)(i)(I), ... of subsection (a)(2) ... if –

....

(1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien and

(2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

A waiver of inadmissibility under section 212(h) 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, parent, son, or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse and children are qualifying relatives in this case. 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-Morales*, 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 (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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 BIA 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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. INS*, 138 F.3d 1292, 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.

In our previous decision, we determined the applicant's spouse would experience extreme hardship upon separation from the applicant, as the record demonstrates that she has serious medical conditions that render her unable to work or drive and have been exacerbated by the anxiety and depression she suffers as a result of the applicant's immigration issues; and she financially and physically depends on the applicant for her support and care as well as the support and care of their children, particularly the applicant's disabled 13-year-old stepdaughter. The record demonstrates the applicant's spouse's situation has not changed since our previous decision.

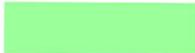
The applicant's motion includes corroborating medical evidence, including a 2009 medical report describing his stepdaughter's disability as resulting from "multiple congenital anomalies including scoliosis," and affidavits by his spouse and children concerning the emotional and physical hardship his stepdaughter would experience upon separation from the applicant. The applicant's spouse indicates her youngest daughter, the applicant's stepdaughter, has a "spinal cord defect and cannot walk properly" and that she will require lifelong medical attention. The applicant's stepdaughter also indicates she would be depressed if the applicant "had to leave the United States" as her "family would not be the same." She discusses how the applicant encourages and supports her by talking to her school principal when she is teased, helping her reach for things when she cannot, assisting her with her homework, and driving her to school; he emotionally supported her and her siblings when their mother was hospitalized; and he helps them to "keep God in [their] hearts." The stepdaughter's oldest sibling also discusses the depression her sister would experience without the applicant, because of her dependency on and emotional ties to him. She describes her sister as wearing a brace and requiring radiation treatment, according to doctors, that she cannot have until she becomes 16 years old. She also describes how the applicant helps her sister by ensuring "she has everything she needs and [taking] her to her doctor's appointments."

The record sufficiently shows that the applicant plays an essential role in his stepdaughter's emotional and physical wellbeing. Accordingly, we find the record also shows that the applicant's stepdaughter would experience extreme hardship upon separation from the applicant due to his inadmissibility.

Addressing the hardships his qualifying family members would experience if they were to relocate to Nigeria, the applicant states in his affidavit submitted with his motion that his spouse requires care for her "serious medical problems" and his stepdaughter requires surgeries and therapy, which neither would receive in Nigeria. The applicant's spouse states that she would not return to Nigeria or take their children there, as her medical doctors are in the United States; she has lupus, seizures, anemia, and heart problems and went into a coma after surgery to remove an ovarian cyst; and she is scheduled for heart surgery and undergoing weekly medical appointments to check her platelet levels in anticipation of the surgery. Also, the applicant's eldest daughter states she fears her mother would die without the surgery she needs, which she cannot have in Nigeria; and her little sister would be unable to survive in Nigeria. To corroborate statements about the hardship his spouse and children would experience in Nigeria, the applicant submits reports concerning educational and social conditions there, particularly focusing on the treatment of women and children as well as individuals with disabilities.

Although the record demonstrates the applicant's spouse is a national of Nigeria, the record also demonstrates she has resided in the United States for almost 13 years, where she maintains close family ties and has been diagnosed with depression and anxiety and receives care and treatment for her physical conditions. The U.S. Department of State indicates the following about medical care in Nigeria:

Nigeria has a number of well-trained doctors, yet medical facilities in Nigeria are in poor condition, with inadequately trained nursing staff. Diagnostic and treatment equipment is often poorly maintained, and many medicines are unavailable. Caution should be taken



when purchasing medicines locally as counterfeit pharmaceuticals are a common problem and may be difficult to distinguish from genuine medications. This is particularly true of generic medicines purchased at local pharmacies or in street markets. Hospitals often expect immediate cash payment for health services.

Country Information, Nigeria, issued August 1, 2014.

The record also demonstrates the applicant's stepdaughter has resided continuously in the United States. Furthermore, addressing the treatment of individuals with disabilities in Nigeria, the U.S. Department of State indicates that while no Nigerian laws prohibit discrimination,

Persons with disabilities faced social stigma, exploitation, and discrimination, and relatives often regarded them as a source of shame. Many families viewed children with disabilities who could not contribute to family income as liabilities and sometimes severely abused or neglected them.

Country Reports on Human Rights Practices for 2013, Nigeria, issued February 27, 2014.

The record reflects that the cumulative effect of the hardship the applicant's spouse and stepdaughter would experience as a result of the applicant's inadmissibility rises to the level of extreme. We thus conclude that were the applicant's spouse and stepdaughter to relocate to Nigeria to be with the applicant due to his inadmissibility, they would suffer extreme hardship given their length of residence in, and family and community ties to, the United States; conditions in Nigeria, which would affect them emotionally, medically, and physically; and the normal hardships associated with relocation.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. at 301. For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and

deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives).

Id. at 301.

The BIA further stated that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.*

The favorable factors in this case are the extreme hardship to the applicant's U.S. citizen spouse and stepdaughter would experience due to their significant medical and physical conditions; hardship to the other children; his close family ties; his residence in the United States for over 24 years; and his successful completion of domestic violence-related counseling. The unfavorable factors include the applicant's convictions for two crimes involving moral turpitude; a criminal charge on February 26, 2002 for assaulting his spouse; and periods of unlawful presence and unauthorized employment.

Although the applicant's immigration and criminal violations are serious, the record establishes that the positive factors, particularly those related to his family's serious medical conditions, in this case outweigh the negative factors and a favorable exercise of discretion is warranted.

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 been met.

ORDER: The motion is granted. The prior decision of the AAO is withdrawn, and the underlying appeal is sustained.