

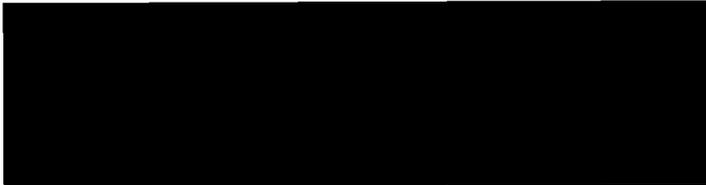
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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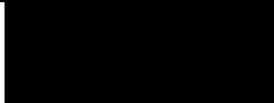
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FILE:



Office: ACCRA

Date:

IN RE:



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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Shumway

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Acting Officer in Charge (AOIC), Accra, Ghana, denied the instant waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Nigeria. In a decision dated August 3, 2006 the AOIC found that the applicant committed fraud or made a material misrepresentation in seeking an immigration benefit and is therefore 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).

The applicant seeks a waiver of inadmissibility pursuant to section 212(i)(1) of the Act in order to reside in the United States with her husband. The AOIC also found that the applicant had failed to establish that the bar to admission would impose extreme hardship on a qualifying relative as per section 212(i)(1) of the Act and denied the waiver application accordingly. On appeal, counsel submitted a brief and additional evidence.

The record contains, among other documents, a statement from the applicant's husband, bank records, tax returns, an employment verification letter, a transcript of a sworn statement from the applicant, a Department of State Country Report on Human Rights Practices pertinent to Nigeria, and documents pertinent to visa applications the applicant has filed.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962, AG 1964); *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960, AG 1961). A misrepresentation made in connection with an application for admission to the United States is material either if the alien is excludable on the true facts or if the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded. *See Matter of S- and B-C-*, *supra*, at 448-449.

The record reveals the following concerning the applicant's immigration application history:

On July 18, 1996 and August 7, 1996 the applicant applied for a nonimmigrant visa (NIV) at the U.S. Consulate in Lagos, Nigeria under the name [REDACTED] with Nigerian passport number [REDACTED] and a date of birth July 5, 1976.

On August 11, 1999, the applicant applied for a NIV at the U.S. Consulate in Lagos, Nigeria under the name [REDACTED] with Nigerian passport number [REDACTED] and a date of birth July 5, 1975.

On June 12, 2000 the applicant applied for a NIV at the U.S. Consulate in Lagos, Nigeria under the name [REDACTED], with Nigerian passport number [REDACTED] and a date of birth July 5, 1976.

On May 12, 2003 the applicant applied for a NIV at the U.S. Consulate in Lagos, Nigeria under the name [REDACTED] with Nigerian passport number [REDACTED] and a date of birth July 5, 1974.

All of the aforementioned applications were denied.

On November 1, 2003, the applicant submitted a Nonimmigrant Visa Application (Form DS-156) seeking a K-3 visa. The applicant used the name [REDACTED] Nigerian passport number [REDACTED], and listed July 5, 1976 as her date of birth. In response to the question concerning whether she had ever been refused a visa, the applicant indicated that she had on July 17, 1996 and June 12, 2000. On November 3, 2003 the U.S. Consulate in Lagos, Nigeria issued a [REDACTED] to the applicant.

An NIV Application Detail in the record, which is dated November 6, 2003, states,

The [applicant] was contacted by telephone on this date and informed that she needed to appear in [Fraud Protection Unit] for an interview and to not use the visa as it would be revoked. As of [close of business] on this date she had not arrived. The visa was revoked.

On November 25, 2003 the applicant applied for admission to the United States using her revoked visa, thus misrepresenting that the visa was valid. She was refused admission and returned to Nigeria. In a statement she made on November 25, 2003, the applicant stated that she did not know that her visa had been revoked.

On appeal, counsel asserted, correctly, that failure to volunteer information when not requested does not constitute a material misrepresentation. Counsel stated that the finding that the applicant is inadmissible was based solely on her failure to reveal her previous visa applications, though she was not directly asked about them.

The AAO notes, however, that the NIV application in the record specifically requests information concerning past visa applications, and the applicant failed to reveal two prior applications containing different names and/or different years of birth. It is also noted that though the applicant had used her married name in applying for an NIV on May 12, 2003, she again used her maiden name when she applied for the K-3 visa on November 1, 2003, in addition to a different year of birth. We note that the basis for the denial of the applicant's prior NIV applications is not revealed in the record, nor is it clear if the applicant also concealed the fact that she had been refused visas on her prior NIV applications. It is also not shown in the record if the applicant's misrepresentations concerning her year of birth, coupled with the use of different variations of her name and different passports, were willful and also significant enough that they succeeded or conceivably could have succeeded in obscuring the fact that she had applied for and been denied an NIV in the past, particularly as regarding those applications filed prior to the November 1, 2003 application. Nor is it apparent that the mere fact of prior refused NIV applications, if the misrepresentations contained therein were not

material, would itself have a material effect on her eligibility for a K-3 visa. It is noted that a misrepresentation or concealment must be shown by “clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material.” *See* 485 U.S. at 771-72.

However, it is presumably questions of the kind discussed above that the Embassy intended to ask and resolve when it sought to interview the applicant after issuing her a K-3 visa. It appears likely from the information in the record that the applicant’s entire application history was not discovered by consular officials at the time the K-3 visa was approved, and the applicant’s failure to reveal her entire immigration history in applying for that visa thus appears to have shut off a material line of inquiry. Further, we find that there is sufficient evidence demonstrating that the applicant was informed that she should appear for an interview at the Embassy and that her K-3 visa would be revoked pending an inquiry as to misrepresentations in her NIV applications. The applicant failed to appear and instead sought admission to the United States on November 25, 2003 using the revoked K-3 visa. In so doing, the applicant misrepresented a material fact—her eligibility for admission to the United States in K-3 status. We note that the applicant has asserted that she was never informed concerning the revocation of her visa prior to seeking admission, but given the several misrepresentations apparent in the applicant’s NIV applications, we accept as credible the evidence that she was provided with notice of the revocation prior to departing Nigeria. It is also noted that on her most recent Application for Immigrant Visa and Alien Registration (DS-230), the applicant appears to indicate that she knew prior to seeking admission that she had been found and/or was inadmissible for material misrepresentation, but that she “thought we could file a waiver when I come in.” The applicant is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant’s husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (Citations omitted.); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (Citations omitted.) Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *see also Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of

great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that the applicant must establish that extreme hardship to her husband would result in the event that he joins her in Nigeria and in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

To demonstrate that failure to approve the waiver application would cause extreme hardship to the applicant’s husband, the applicant must show that, if she remains absent from the United States and her husband remains in the United States, her husband will suffer extreme hardship. The applicant must also demonstrate that if she remains in Nigeria and her husband joins her to live there, that will cause him extreme hardship.

In the brief on appeal, counsel observed that the applicant and her husband have been the victims of a robbery in Nigeria, and stated that the applicant’s husband would likely be robbed again if he returned to Nigeria. The State Department Country Report provided states that the government in Nigeria is guilty of various human rights abuses, especially in the Niger Delta region, but does not address robberies or other violent crime. The AAO notes that the applicant’s wife lives in Enugu, which is not in the Niger Delta region of Nigeria, and which is also her husband’s place of birth.

In his statements, the applicant’s husband stated that he misses his wife and child,¹ which causes him stress, which has resulted in severe, untreatable depression, insomnia, and an inability to concentrate, and has affected his health. He also stated that he is paid on commission, and that his inability to concentrate has reduced his ability to make sales and earn commissions. He stated that his reduced income, his telephone bills, and his frequent trips to Nigeria to see his wife and child have caused him to consume his savings. He further stated that other salespeople have been promoted to management positions, and implied that his failure to receive such a promotion is the result of his wife’s absence and his resulting emotional condition.

The applicant’s husband also reiterated that he and the applicant had been the victims of a robbery in Nigeria during which they were beaten severely, almost to death, and required hospital treatment. He further stated that because of that robbery and the security conditions in Nigeria, he fears returning there. In support of those assertions he provided an affidavit and a police extract pertinent to the robbery and the Department of State report on human rights practices in Nigeria.

The police extract and the affidavit indicate that the applicant and her husband were robbed on September 18, 2006 and details the property taken. They do not mention any injuries. The record contains a letter from a medical doctor at the Nosco Hospital in Enugu, Nigeria, that states,

¹ At the time he wrote, the applicant had born her husband only one child.

The [applicant's husband] sustained injuries on his feet as a result of robbery incident in which he was involved in [sic] with his wife and two children on 16th of April 2006.

They were treated in our hospital for three days and responded to treatment.

The AAO notes that the doctor's assertion that the applicant sustained injuries to his feet does not lend much support to the applicant's assertion that he and his wife were beaten almost to death.

The record contains a printout of the applicant's husband's income tax data from 2001 and a photocopy of the applicant's husband's 2002 tax return. The printout shows that the applicant's husband earned wages, *etc.* of \$52,512 during 2001. The 2002 return shows that the applicant's husband earned total income of \$21,331 during that year. The applicant has submitted no tax records or other financial records for the years after 2002.

The record contains a copy of some pages of the applicant's husband's Nigerian passport, A1397884, issued March 21, 2002. It indicates that the applicant's husband departed Nigeria on April 3, 2002, entered Nigeria on December 18, 2002, and departed Nigeria again on January 16, 2003. The portions provided contain no evidence of other entries into or departures from Nigeria. Photocopies of an itinerary and an excess baggage ticket appear to indicate that the applicant's husband traveled by air from Houston to Lagos on March 3, 2002, and returned on April 3, 2002.

The record contains no evidence, beyond the applicant's assertions, pertinent to the existence or severity of the depression from which the applicant's husband claims to suffer. The record contains no copies of telephone bills or any other evidence pertinent to the high telephone expenses the applicant's husband claims.

Although the statements by the applicant's husband are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain the burden of proof in these proceedings. *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 evidence is insufficient to show that the applicant's husband suffers from depression or, if he does, that it is either severe or untreatable, as he claims. The evidence is insufficient to demonstrate that the applicant's husband's income has decreased as a result of his separation from his wife, that his reaction to the separation has cost the applicant's husband a promotion, or that he has been paying very expensive telephone bills.

The evidence shows that the applicant's husband has traveled to Nigeria once during March of 2002 and once during December of 2002. Beyond those two trips, the record does not support the applicant's husband's assertion that he has made "numerous" trips to Nigeria. The evidence in the record does not support counsel's assertion that the applicant's husband's travel to Nigeria is costing him approximately \$18,000 annually.

Although the evidence does not support the assertion that the applicant's husband is likely to be robbed again if he returns to Nigeria, the AAO acknowledges that the applicant's husband may anticipate that possibility based on his previous experience, and that his anticipation of that possible event may result in some hardship to him.

Separation from one's spouse or child is, by its very nature, a hardship, as is separation from the country where one has chosen to live. However, they are hardships typical to cases of the removal of a family member from the United States. The point made in this and prior decisions on this matter is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exists.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that, if the applicant remains in Nigeria and the applicant's husband remains in the United States, the applicant's husband will experience extreme hardship as a consequence of his separation from the applicant. Further, the record does not support a finding that the applicant's husband will face extreme hardship if he relocates to Nigeria to live with the applicant.

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 failed to establish extreme hardship to her U.S. citizen husband as required under section 212(i)(1) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act, the burden of proving eligibility rests with the applicant. *See* 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.