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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



U.S. Citizenship  
and Immigration  
Services

H5

[Redacted]

RALEIGH, NC 27610

FILE: [Redacted] Office: KINGSTON, JAMAICA

Date: SEP 08 2010

IN RE: Applicant: [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:

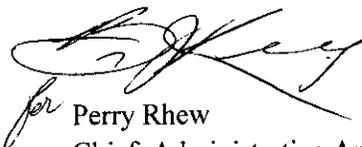
[Redacted]

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 \$585. 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,

  
for Perry Rhew

Chief, Administrative Appeals Office

**ACTION COMPLETED**  
**APPROVED FOR FILING**  
Initials: JT Date: 6/22/11  
FCO/Unit COW

**DISCUSSION:** The waiver application was denied by the Officer-in-Charge (OIC), Kingston, Jamaica, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of Nigeria and citizen of Jamaica 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 attempting to procure a benefit under the Act through fraud or the willful misrepresentation of a material fact: to wit, the applicant attempted to adjust status to Legal Permanent Resident by entering into a marriage with a United States citizen while still married to another woman, in order to circumvent the immigration laws. The record indicates that the applicant is currently married to a Lawful Permanent Resident of the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States with his wife and children.

The OIC found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer-in-Charge*, dated May 7, 2007.

On appeal, the applicant, through counsel states that United States Citizenship and Immigration Services (USCIS) erred in denying the applicant's waiver application because the applicant did not intentionally conceal his previous marriage and did not intentionally commit fraud. *Form I-290B*, filed June 4, 2007.

The record includes, but is not limited to, counsel's appeal brief, a letter of hardship from the applicant's wife, copies of medical bills for one of the applicant's children, Imade Asemota, a copy of a mortgage payment notice from Wells Fargo Bank, indicating the applicant's wife as the borrower, a copy of a General Warranty Deed, a copy of a prescription for the applicant's wife from [REDACTED] a copy of a lab request for the applicant's wife from [REDACTED] and copies of telephone, car insurance, car note and various utility bills. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) 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.
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now 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 reflects that the applicant married his first wife, [REDACTED] in Benin City, Nigeria in December 1983. On July 28, 1998, the applicant entered the United States and was admitted as a B-2 visitor with authorization to remain in the United States until January 27, 1999. On August 15, 1998, the applicant married his second wife, [REDACTED], a United States citizen, in North Carolina. On December 4, 1998, [REDACTED] filed a Petition for Alien Relative on the applicant's behalf (Form I-130), and on the same date, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the I-130 petition. On December 11, 2003, the district director, Charlotte, North Carolina, denied the Form I-130 petition and the Form I-485 application, finding that the applicant entered into a marriage with [REDACTED] solely to circumvent the immigration laws. The applicant was then placed in removal proceedings. On March 5, 2004, the applicant and his first wife, [REDACTED], entered into a final divorce decree in North Carolina, and his marriage to [REDACTED] was annulled on August 19, 2004. On June 20, 2005, the applicant remarried his first wife, [REDACTED] in North Carolina. On October 6, 2005, the applicant departed the United States pursuant to a grant of voluntary departure. On July 31, 2006, the applicant submitted an application for an immigrant visa at the United States Embassy in Kingston, Jamaica, as a dependent of his wife, [REDACTED] who was granted legal permanent resident status as the beneficiary of an approved I-140, Immigrant Petition for Alien Worker. On August 30, 2006, the Vice Consul, United States Embassy, Kingston, Jamaica, found the applicant ineligible under section 212(a)(6)(C)(i) of the Act. On the same date, the applicant filed a Form I-601. On May 7, 2007, the OIC denied the applicant's Form I-601, finding that the applicant had attempted to procure an immigration benefit by fraud or the willful misrepresentation of a material fact and had failed to demonstrate extreme hardship to a qualifying relative. On June 4, 2007, the applicant through his attorney filed a Form I-290B, Notice of Appeal.

The record reflects that the district director, Charlotte, North Carolina, found that due to inconsistencies in an interview related to his adjustment of status, that the applicant committed marriage fraud with his marriage to Kimberly Dunn, and denied the relative petition and the accompanying adjustment of status application. *See Decision on Petition for Alien Relative*, dated December 11, 2003. Thus, counsel's assertion that the applicant did not commit fraud against the service is without merit. Based on the applicant's prior attempt to adjust status, a benefit under the Act, by fraud or the willful misrepresentation of a material fact, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

*Id.* See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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 *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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. See *Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; see also *U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. See, e.g., *Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered

in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The record reflects that the applicant's spouse, Helen Nosakhare Asemota, is a 54-year-old Legal Permanent Resident of the United States. The applicant and his wife were married in Raleigh, North Carolina, June 20, 2005, and they have four children. The applicant's spouse states that she is suffering extreme emotional and financial hardships as a result of the denial of the waiver application.

Regarding the emotional hardship of separation, the applicant's wife states that she needs the applicant to help her take care of their four children. The applicant's wife states that the applicant was responsible for taking care of the children while she concentrated on her career as a researcher. She states that with the applicant's departure from the United States, "it is very difficult for me as a very busy career woman and sole breadwinner at this time to physically care for our four children alone." The applicant's wife states that it was particularly difficult for her to care for her daughter alone when she was sick in the hospital. The applicant's wife also states that her children miss the applicant, that one of her teenage sons is being placed on depression medication as a result of emotional distress arising essentially from the applicant's absence, and that she dreads coming home to face her 9-year-old's "ceaseless questions/queries of when is daddy coming to join us." The applicant's wife also states that her career as a university professor is very demanding and challenging, that she needs to be more focused and that she is not able to devote the time and attention she needs for her job because she is minding the children, chauffeuring them to and from school activities, sports activities between campuses and other activities, which the applicant would have been doing if he were in the United States. See *Letter of Hardship by [REDACTED]* dated October 12, 2006.

Regarding financial hardship, the applicant's wife states that she accumulated medical expenses as a result of her daughter, Imade's, hospitalization and that she wants the applicant to help her with the bills. The applicant's wife also states that two of her children are college students and that maintaining them in school is very rough financially without the applicant, and that she needs the applicant to help her pay for the mortgage, and other bills. *Letter of Hardship by Helen N. Asemota, PhD*, dated October 12, 2006. The record contains copies of bills relating to Imade's hospital and doctor visits, copies of telephone, cable, gas/energy, water, insurance and other utility bills. The record does not contain information about the family's income or copies of the applicant and his wife's Individual Income Tax Returns (Form 1040) which will show the family's income.

While the AAO acknowledges the claims made by the applicant's wife, it does not find the evidence in the record is sufficient to demonstrate that the challenges encountered by the applicant's wife, considered cumulatively, meet the extreme hardship standard. While the emotional hardship of separation is apparent from the applicant's wife's declaration, the applicant did not provide medical records, detailed testimony, or other evidence to show that the psychological hardships his wife faces are unusual or beyond what would be expected upon family separation due to one member's inadmissibility. The record

does not have information regarding the applicant's family's income. Given the lack of information about the family's income, the AAO cannot conclude that family separation has caused extreme financial hardship to the applicant's wife. Finally, hardships faced by the applicant's children as a result of family separation are not calculated in the extreme hardship analysis, except to the extent that these hardships impact the applicant's wife. In this case, the applicant has not established such hardship to his wife. Although the applicant's wife states that one of her teenage sons has been placed on depression medication as a result of family separation, there is no documentation in the record to establish that. The record does not contain medical records showing the nature and severity of Imade's medical condition, a description of any treatment or family assistance needed or how her medical condition has impacted the applicant's wife. Accordingly, the applicant has failed to establish that the challenges his wife faces as a result of family separation, rise to the level of extreme hardship.

Regarding relocation, no claim was made that the applicant's wife would suffer extreme hardship if she relocated to Jamaica to be with the applicant. Therefore, the AAO cannot make a determination of whether the applicant's wife would suffer extreme hardship if she moved to Jamaica.

In sum, although the applicant's wife claims hardships based on family separation, the record does not support a finding that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to his spouse, as required for a waiver of inadmissibility under section 212(i) and section 212(a)(9)(B)(v) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.