

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



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
**U.S. Citizenship
and Immigration
Services**

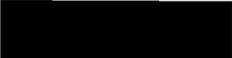
PUBLIC COPY



HS

Date: **JUL 27 2011**

Office: PROVIDENCE, RHODE ISLAND

FILE: 

IN RE:

Applicant: 

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:

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 \$630. 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Providence, Rhode Island. 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 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 fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and children in the United States.

The acting field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the Acting Field Office Director*, dated February 13, 2009.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED] indicating they were married on January 4, 2006; a letter from [REDACTED] employer; copies of tax returns and other financial documents; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.¹

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.

Section 212(i) provides:

(1) 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

¹ The AAO notes that on the applicant's Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B), counsel states, *inter alia*, that the applicant was never given the opportunity to submit evidence that his departure from the United States would cause extreme hardship to his wife. Counsel requested thirty days to submit a brief and additional supporting documentation. *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B)*, dated March 14, 2009. On June 20, 2011, the AAO forwarded a fax to counsel informing him that this office had not received a brief or additional supporting documentation related to this matter. To date, counsel has not responded to the AAO's fax. Therefore, the AAO will adjudicate the appeal based on the documentation contained in the record.

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

In this case, the record shows, and the applicant does not contest, that on March 23, 1998, he attempted to enter the United States using a photo substituted visa. The record shows the applicant was removed from the United States on March 28, 1998. The applicant was informed that he was prohibited from entering, attempting to enter, or being in the United States for a period of five years from the date of his departure from the United States. *Notice to Alien Ordered Removed/Departure Verification (Form I-296)*, dated March 28, 1998. The record further shows, and the applicant does not contest, that he entered the United States on May 28, 2002, using a fraudulently obtained a B2 nonimmigrant visa under a different name. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit.

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. *See Salcido-Salcido*, 138 F.3d at 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 this case, counsel contends that the applicant’s U.S. citizen wife, the couple’s daughter, and the applicant’s step-daughter would suffer extreme hardship if the applicant were removed from the United States. *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B)*, *supra*.

Upon a complete review of the record, there is insufficient evidence to show that the applicant’s wife, Ms. Reed, will suffer extreme hardship as a result of the applicant’s waiver being denied. Significantly, there is no affidavit, letter, or any statement from either the applicant or his wife in the record. Therefore, neither the applicant nor his wife has specifically addressed how the denial of the applicant’s waiver application will cause [REDACTED] extreme hardship. Furthermore, neither the applicant nor his wife discuss the possibility of [REDACTED] moving to Nigeria to avoid the hardship of separation, and neither address whether such a move would represent a hardship to her.

To the extent counsel contends the couple has a child together and the applicant has a step-daughter, there is no evidence in the record, such as copies of birth certificates, to substantiate this claim. In any event, hardship to the applicant’s children can be considered only insofar as it results in hardship to [REDACTED] the only qualifying relative in this case. The record does not show that the applicant’s situation is unique or atypical compared to other individuals in similar circumstances. *See Perez v. INS*, *supra* (defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely 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.²

ORDER: The appeal is dismissed.

² The AAO notes that even though five years have passed since the applicant's removal on March 28, 1998, the applicant did not remain outside of the United States for five years, as required by 8 C.F.R. § 212.2(a). Therefore, even if the applicant's appeal had been sustained, the applicant would need to file an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212).