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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



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Date: JUN 29 2011

Office: NEWARK (MOUNT LAUREL) FILE: 

IN RE: 

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:

SELF-REPRESENTED

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,

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Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey. 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 misrepresenting his intentions to remain in the United States in order to obtain admission to the United States at New York, New York on July 10, 1997.¹ The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States.

The District Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in extreme hardship to the qualifying relative. The District Director denied the application accordingly. *See Decision of the District Director* dated January 27, 2009.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), an appeal brief from the applicant, the Record of Sword Statement of the applicant, country condition materials, letters from the qualifying spouse and the applicant, a contract regarding renovations done for the qualifying spouse and applicant's home, the qualifying spouse's birth certificate, a marriage certificate, financial documentation relating to the qualifying spouse's income from two jobs, an affidavit regarding the applicant's name change, bank statements indicating that the qualifying spouse is receiving child support, an approved Petition for Alien Relative (Form I-130) and other documentation submitted with the Application to Adjust Status (Form I-485). 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, that:

- (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.

The District Director found that the applicant misrepresented his intention to remain in the United States in order to obtain admission to the United States at New York, New York on July 10, 1997. The applicant asserts that he was an official of a pro-democracy organization in Nigeria and that he intended to visit the United States briefly to raise funds for the organization before traveling to Canada for a human rights conference. *See Applicant's Appeal Brief* dated March 24, 2009 at 7-8. The applicant further contends that when he entered the country in July 1997 he did not intend to stay indefinitely in the United States and, if that was the case, he would have "applied for political

¹ Moreover, the applicant also claims that he legally changed his name and that is why he entered the United States with a passport and visa under a different name. The AAO notes that the documents in the file including his original passport, second passport and child's birth certificates all contain different dates and years of birth and the applicant has provided no explanation for the differing dates.

asylum.” The applicant further states that after his arrival in the United States he was advised not to return to Nigeria for safety reasons. *See Applicant’s Appeal Brief* at 8. The applicant did not provide any evidence to support his assertions.

In a Record of Sworn Statement given at his interview for adjustment of status, the applicant clearly responded “no” when asked by the immigration official, “Did you ever intend to travel to Canada?” *See Record of Sworn Statement* dated April 18, 2007. The applicant did not explain why he made this statement if he had intended to travel to Canada rather than remaining in the United States when he was admitted as a visitor in 1997. When an applicant is seeking waiver of inadmissibility, the burden of proof is always on the applicant to establish by a preponderance of the evidence that he is not inadmissible. The burden never shifts to the government to prove admissibility during the adjudication of a benefit application, including an application for a waiver. INA § 291; *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1976). The applicant has provided no evidence to support his claim that he did not procure admission to the United States by misrepresenting his immigrant intent, and he is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien’s United States citizen, lawful permanent resident, or qualified alien parent or child.

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 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).

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.

The applicant's qualifying relative is his United States citizen wife. The documentation provided that specifically relates to the qualifying spouse's hardship includes Form I-601, Form I-290B, an appeal brief from the applicant, the Record of Sword Statement of the applicant, country condition materials, letters from the qualifying spouse and the applicant, a contract regarding renovations, financial documentation relating to the qualifying spouse's income from two jobs, bank statements indicating that the qualifying spouse is receiving child support and other documentation submitted with Form I-485. The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant asserts that he does not want to "abandon his children" and indicates that his relationship with his children will otherwise be "disturbed" with potential "adverse and serious consequences to them." The qualifying spouse provided a letter which indicates that she is suffering financially because she is the sole financial support for her family since the applicant cannot legitimately work.

The AAO finds that the applicant has failed to establish that his spouse will suffer extreme hardship as a consequence of being separated from him. The applicant's spouse asserts that she is encountering financial hardship as a result of the applicant's inadmissibility and the applicant's inability to work due to his inadmissibility. The record contains tax returns, earnings statements and bank statements, demonstrating the income that the qualifying spouse earns from her two jobs and child support payments, which she presumably receives for her older children. However, no documentation relating to the qualifying spouse's expenses was provided, other than a copy of a bill for home renovations, which is difficult to read and does not explain the necessity of the work performed. As such, the applicant failed to establish that the qualifying spouse is having a difficult time supporting herself and her family, or that she will suffer financially as a result of the waiver being denied. Moreover, while the applicant asserts that his children may suffer "adverse and serious consequences" if he departs the United States, he does not address or submit evidence of any additional hardships that his return to Nigeria may cause for his qualifying spouse.

There are no claims made regarding any hardships that may be suffered by the qualifying spouse if she relocates to Nigeria with the applicant. Further, although country condition information regarding political and human rights issues in Nigeria was submitted, there are no assertions made that such conditions would adversely affect the qualifying spouse specifically. The applicant has also not addressed whether he has family ties in Nigeria, and the AAO is thus unable to ascertain whether and to what the extent the applicant and qualifying spouse would receive assistance from family members. As such, the applicant has not met his burden of demonstrating that his qualifying spouse will suffer extreme hardship in the event that she relocates to Nigeria.

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 United States citizen 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 proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.