

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

[Redacted]

H5

DATE: Office: BALTIMORE, MD

NOV 01 2011

FILE: [Redacted]

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.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of Nigeria who used a passport with a false name to enter the United States in 1996. The applicant 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). She is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 3, 2009.

On appeal, counsel for the applicant asserts that the District Director erred as a matter of law in denying the applicant's waiver and by using an improper standard in reaching his conclusion. *Form I-290B*, received July 6, 2009.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (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 chapter is inadmissible.

The record indicates that the applicant presented a passport with a false name in order to enter the United States in 1996, and thus entered the United States by materially misrepresenting her identity.¹ Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

The record contains, but is not limited to, the following evidence: a brief from counsel; a statement from the applicant; a statement from the applicant's spouse; statements from associates of the applicant and her spouse; tax records for the applicant and her spouse; a copy of a residential deed for property owned by the applicant and her spouse; country conditions materials for Nigeria; a financial obligations statement for the applicant and her spouse; a statement from [REDACTED], dated June 24, 2009; background materials on febrile seizures; hospital discharge instructions for the applicant's youngest son; and copies of birth certificates for the applicant's sons.

¹ The District Director also notes that the applicant failed to reveal a prior arrest in the state of Maryland. Records indicate that the applicant was previously charged with Theft, Less Than \$500, and Attempted Theft, in 1997, but that the charges were not prosecuted and the records have been expunged pursuant to a court order. As the applicant is inadmissible on other grounds, section 212(a)(6)(C)(i), and as a waiver under 212(i) would waive any additional basis of inadmissibility, the AAO will not make a determination as to whether these charges constitute a basis for inadmissibility under section 212(a)(2)(A).

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

- (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 a VAWA self-petitioner, 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. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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.

On appeal, counsel for the applicant asserts that the District Director’s decision was in error and that the applicant’s spouse and children will experience extreme hardship upon relocation. *Statement in Support of Brief*, received August 3, 2009. Counsel asserts that the applicant’s spouse has no family contacts in Nigeria, has family contacts and ties in the United States that would be severed upon relocation, would not be able to find employment in Nigeria, and would suffer acculturation impacts at having to adjust to life in a developing country. The applicant asserts that she would lose the ability to support her children upon relocation because of the economic situation in Nigeria, and that the social and political conditions there are very unstable. *Statement of the Applicant*, dated April 21, 2009.

The record includes country conditions materials on Nigeria, including a Travel Warning published by the Consular Section of the U.S. State Department, as well as the country sheet on Nigeria published by the Consular Section of the U.S. State Department. These materials discuss the

conditions in Nigeria on a national level, and do not relate specifically to the applicant's spouse. While the materials may be sufficient to establish that there is a lower quality of life or standard of living in Nigeria, this is not adequate to establish extreme hardship. *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978); *Matter of Ige*, 20 I&N 880 (BIA 1994). Children are not qualifying relatives in this proceeding, as such, any hardship to them is only relevant to the degree that it indirectly results in a hardship to the qualifying relative, in this case the applicant's spouse. Nonetheless, the AAO must consider the totality of circumstances when evaluating the record for hardship factors. In this case the record contains evidence sufficient to establish that the applicant's youngest son has a medical condition, febrile seizures. Currently the child's treatment is covered by the health insurance provided by the applicant's U.S. employment. The child's relationship with medical doctors and his continuity of care are critical to his well being, and the severing of these ties upon relocation to Nigeria would more than likely result in physical, financial and emotional impacts on the applicant's spouse. Based on these observations the AAO will consider the medical hardship of the applicant's son as a hardship factor on the applicant's spouse upon relocation to Nigeria.

The AAO also notes that the applicant's spouse is currently 55 years old, and has resided in the United States since 1997, a period of 14 years. Although the applicant's spouse is from Nigeria, and would be familiar with its language, customs and environment, his lengthy period of residence in the United States will be given some consideration.

When the hardship factors upon relocation are considered in aggregate - the applicant's spouse's lack of family ties in Nigeria, his age and lengthy residence in the United States, the medical condition of his son - they rise above the common impacts associated with relocation with an inadmissible family member. Therefore the AAO finds that the applicant's spouse would experience extreme hardship were he to relocate to Nigeria.

On appeal counsel asserts that the District Director was erroneous in determining that the applicant's spouse would not experience extreme hardship upon separation and employed an improper standard of review. *Brief in Support of Appeal*, dated August 3, 2009. Counsel explains that the applicant earns the majority of the family's income, and that her employment provides health insurance for the family. She explains that the applicant's oldest son has febrile seizures and that his treatment is covered by the applicant's health insurance. She further explains that the applicant's spouse would not be able to meet the family's financial obligations without the applicant's income, or provide adequate care for his children if the applicant were removed.

The applicant's spouse has submitted a statement and adds that the applicant's training and employment as a nurse is very important because she was able to detect her son's condition and recognize when he needs to go to the hospital. *Statement of the Applicant's Spouse*, dated April 21, 2009.

The record contains a statement from [REDACTED] stating that the applicant's oldest son suffers from febrile seizures, as well hospital discharge records and background data discussing the condition. The AAO finds these materials sufficient to

establish that the applicant's son has a serious medical condition which needs to be closely monitored. Although children are not qualifying relatives in this proceeding, the evidence with regard to the medical condition of the applicant's son is sufficient to indicate that the applicant's removal would result in both an indirect physical and emotional hardship factor on the applicant's spouse.

The record contains copies of tax returns and other documentation which indicate that the applicant is the primary income earner in their household. The tax return for 2008 indicates that the applicant earned roughly \$60,000 annually, while the applicant's spouse earned less than one third of that as a taxi driver. Counsel has submitted a detailed breakdown of the family's financial obligations which indicates that the family's monthly income exceeds expenses by only \$861, even with their combined incomes. Based on this evidence it can be determined that the applicant's removal would result in a significant financial impact on the applicant's spouse. When other considerations are taken into account, such as the need for medical insurance to cover the costs of health care for their oldest son, the record establishes that the applicant's spouse would experience a financial impact of departure that results in a significant hardship factor.

When these hardship factors are considered in relation to the common impacts which result from separation the record establishes that the applicant's spouse would experience hardship factors upon separation resulting in extreme hardship. As the applicant has established that a qualifying relative will experience extreme hardship upon relocation and separation, the AAO may now move to consider whether the applicant warrants a waiver as a matter of discretion.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then “balance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Id.* at 300 (Citations omitted).

The AAO finds that the unfavorable factors in this case include the applicant’s misrepresentation, unauthorized employment and unlawful presence. The favorable factors in this case include the presence of the applicant’s spouse, the presence of her U.S. citizen children, the delicate medical condition of her oldest son and the lack of any criminal record during her residence here. Although the applicant’s violations of immigration law are serious and cannot be condoned, the favorable factors in this case outweigh the negative factors. Therefore favorable discretion will be exercised. The director’s decision will be withdrawn and the appeal will be sustained.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The application is approved.