

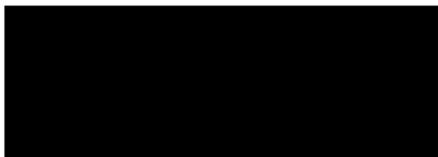
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave. NW MS 2090  
Washington, DC 20529-2090  
U.S. Citizenship  
and Immigration  
Services

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DATE: NOV 16 2011 OFFICE: ACCRA, GHANA

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:

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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Accra, Ghana, and 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 having sought to procure admission to the United States through fraud or misrepresentation. The applicant is the son of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to join his U.S. Citizen father and siblings in the United States.

The Field Office Director concluded that the applicant had not established extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated June 12, 2009.

The record includes, but is not limited to, statements from the applicant, his father, his step-mother, siblings, and other family, letters from physicians and dentists, medical records, evidence of birth, marriage, divorce, and naturalization, Federal income tax returns, employment letters, and letters and records from educational institutions. 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:

- (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.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [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 [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 at a 2006 immigrant visa interview the applicant claimed he was born in 1988 when in fact he was born on October 1, 1980. The applicant misstated his date of birth in order to obtain an immigrant visa immediately as a child of a U.S. Citizen rather than wait for his priority date under the F-1 family preference category as an unmarried adult son or daughter of a U.S. Citizen. The applicant made a material

misrepresentation because he was ineligible to receive an immigrant visa at the time he was interviewed.<sup>1</sup> The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to procure admission to the United States through fraud or misrepresentation. The applicant's qualifying relative in this case is his U.S. Citizen parent.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

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

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<sup>1</sup> The U.S. Department of State indicates in March 2006 the priority date for applicants in the F-1 category was April 22, 2001. The applicant's father filed the Form I-130 in April 2002.

“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, the applicant, appearing without counsel, claims the Field Office Director’s decision was a result of “bias,” and was “taken without proper investigation to the reasons for [his] actions at the time [he] made [the] change of age” misrepresentation. *Form I-290B, Notice of Appeal or Motion*, July 15, 2009. The applicant explains he was “under constant terrorism from armed robbery” and on December 13, 1997, the applicant claims: “armed men (gun men) attacked me in my house over my father’s SUV (GMC – Jimmy) he brought to the country from the United States leaving me injured, destroying my upper dentition. I presently carry an artificial (prosthetic) dentition.” *Id.* The applicant contends “since my siblings joined my father in the U.S. I have suffered several arm[ed] robbery attacks in my home because they (people) understand that my father doesn’t want to come and live with me in Nigeria.” *Id.* As supporting evidence, the applicant submits a letter from [REDACTED] of Faith Mediflex. Therein, [REDACTED] reports: “The above named patient [REDACTED] presented on October 14, 1997 with a complain[t] of fractured teeth on his upper jaw of 4 days duration. He claimed to have been beaten by armed robbers who broke his teeth. At presentation he had intermittent pain, localized but does not disturb sleep. Pain was [relieved] by analgesic. On examination fractured teeth [12, missing teeth 1].” *Letter from [REDACTED]*, June 30, 2009.

The applicant also describes an incident where his father suffered gunshot wounds during a visit to Nigeria, and as a result, “fears coming to Nigeria again because he feels death is hiding everywhere back home.” *Form I-290B, Notice of Appeal or Motion*, July 15, 2009. In support, the applicant submits a letter from [REDACTED] at the [REDACTED]. Therein, [REDACTED] states: “This is to confirm that [REDACTED] [REDACTED] was a victim of [an] Armed Robbery attack on the 17<sup>th</sup> of February, 1998 in [REDACTED].”

Nigeria. And he was subsequently operated upon to remove a bullet lodged on the 5<sup>th</sup> lumbar vertebra. The peri-operative was uneventful.” *Letter from* [REDACTED], July 7, 2009. The applicant’s father confirms: “it is impossible for me to return to join [the applicant] in Nigeria, as I too face grave dangers as a returning resident from the United States. On one previous trip I was shot six times by robbers and hospitalized. They said I had come from America and that I had money.” *Affidavit of applicant’s father*, October 30, 2008.

The applicant’s father also contends he suffers from emotional hardship as a result of the separation from the applicant. The applicant’s father explains: “Being separated from him is especially difficult on me as all his sibling[s] are here and he is alone in Nigeria. I feel like he is abandoned in Nigeria, and it causes me severe emotional distress as he faces constant danger from robbers and vandals in our country... I could not bear not being able to have my son with me, and knowing that I would not be able to protect him in the dangerous environment in which he lives. I would have failed my son.” *Affidavit of applicant’s father*, October 30, 2008. The applicant’s father additionally asserts: “I am employed with St. Vincent Hospital in New York City, as an assistant radiology technician. The situation with my son is affecting my ability to work and to function in my everyday life. I live in constant fear that he will be attacked again as criminals try to get whatever financial support they assume that we send to provide for his care and schooling.” *Id.*

The applicant claims on December 13, 1997, “armed men (gun men) attacked [him] in [his] house over [his] father’s SUV (GMC – Jimmy) he brought into the country from the United States leaving [him] injured, destroying [his] upper dentition.” *Form I-290B, Notice of Appeal or Motion*, July 15, 2009. The sole piece of evidence to support this claim is the letter from a dentist, dated June 30, 2009, describing the applicant’s visit which occurred 11 years previously. *Letter from* [REDACTED], June 30, 2009. The dentist does not confirm the incident, and the dentist does not indicate he / she was present at the events in question. The dentist only states the applicant “claimed to have been beaten by armed robbers who broke his teeth.” *Id.* Nothing further is submitted to corroborate the applicant’s assertions regarding this incident.

Although the applicant submits some evidence of the 1997 incident, there is no evidence, such as police reports or affidavits from witnesses, supporting the applicant’s assertion that he is the victim of “several arm[ed] robbery attacks in [his] home.” *Form I-290B, Notice of Appeal or Motion*, July 15, 2009. Although the applicant’s assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). Going on record without supporting documentary evidence is not sufficient for purposes of meeting 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 record additionally contains some evidence of the applicant’s father’s 1998 armed robbery incident; however, this evidence somewhat conflicts with the father’s own affidavit. A physician

confirms the applicant's father "was a victim of [an] Armed Robbery attack on the 17<sup>th</sup> of February, 1998." *Letter from* [REDACTED], July 7, 2009. In this letter, dated 10 years after the incident, the physician does not state whether he / she was present at the armed robbery attack, or how he / she knows the applicant's father was operated on. Furthermore, the physician's report that the father "was successfully operated upon to remove a bullet lodged on the 5<sup>th</sup> lumbar vertebrae" is somewhat inconsistent with the father's account, that he was shot not once, but six times. *Id.*, see also *affidavit of applicant's father*, October 30, 2008.

In support of a claim of emotional hardship, the applicant's father attests: "I am employed with St. Vincent Hospital in New York City, as an assistant radiology technician. The situation with my son is affecting my ability to work and to function in my everyday life." *Affidavit of applicant's father*, October 30, 2008. Again, no evidence is submitted to substantiate this claim. While the AAO acknowledges that the applicant's father would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the emotional or other impacts of separation on the applicant's father are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant remains in Nigeria without his father.

There is, however, sufficient evidence the applicant's father would suffer extreme hardship upon relocation to Nigeria. The applicant's father has submitted some evidence that he suffered from at least one bullet wound during a visit to Nigeria. *Letter from* [REDACTED], July 7, 2009. The U.S. Department of State confirms in a travel warning that [REDACTED] Edo State, Nigeria, where the applicant resides, is unsafe for U.S. Citizens. Therein, the U.S. Department of State reports:

The U.S. Department of State warns U.S. citizens of the risks of travel to Nigeria and continues to recommend U.S. citizens to avoid all but essential travel to the [REDACTED], and Rivers; the Southeastern states of [REDACTED]; the city of [REDACTED] States in the northeast; and the Gulf of Guinea because of the risks of kidnapping, robbery, and other armed attacks in these areas. Violent crime committed by individuals and gangs, as well as by persons wearing police and military uniforms, remains a problem throughout the country... Violent crime committed by individuals and gangs, as well as by some persons wearing police and military uniforms, is an ongoing problem throughout the country, especially at night. Visitors and resident U.S. citizens have experienced armed muggings, assaults, burglary, carjacking, rape, kidnappings, and extortion - often involving violence. Home invasions remain a serious threat, with armed robbers accessing even guarded compounds by scaling perimeter walls; following, or tailgating, residents or visitors arriving by car into the compound; and subduing guards and gaining entry into homes or apartments.

*U.S. Department of State travel warning: Nigeria*, April 15, 2011. This travel warning, describing armed attacks in ██████ State, where the applicant's father was wounded, is consistent with the physician's report of the father's bullet wound. The AAO therefore finds the applicant's father he has an objective fear for his safety in Nigeria, given his specific history and current country conditions. As such, the AAO finds the applicant's father would suffer extreme hardship upon relocation to Nigeria.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if he relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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 U.S. Citizen father 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.