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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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[REDACTED]

DATE: OFFICE: PHILADELPHIA, PA

NOV 17 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 PETITIONER:

[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 \$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, Philadelphia, Pennsylvania, 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 has resided in the United States since 1996, when he entered without inspection. He 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 a benefit under the Act by fraud willful misrepresentation of a material fact. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. Citizen spouse.

The Field Office Director concluded that the applicant failed to show extreme hardship to his U.S. Citizen spouse if the applicant was forced to leave the United States and denied the application accordingly. *See Decision of Field Office Director* dated May 7, 2009.

On appeal, the applicant submits a brief in support of appeal. Therein, counsel for the applicant first alleges USCIS was incorrect in finding the applicant inadmissible as explained in the Field Office Director's decision. *See brief in support of appeal*, July 1, 2009. Regardless, counsel asserts the applicant's spouse would suffer extreme hardship in the form of financial, psychological / emotional, and other hardship if the applicant were forced to return to Nigeria. *Id.*

The record includes, but is not limited to, a Fourth Circuit Court of Appeals opinion, birth, marriage, divorce, death, and naturalization certificates, affidavits from the applicant's spouse, the applicant's sworn statements, a psychiatric evaluation, income tax returns, paystubs, educational certificates, letters from family, friends, and employers, bank account and billing statements, a lease agreement, and U.S. Department of State reports. 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 the applicant initially entered the United States in B1/B2 visitor status on May 27, 1985, and was authorized to stay until July 31, 1985. The applicant stayed past his period of authorized stay, was placed in deportation proceedings, and left pursuant to a grant of voluntary departure on or about March 12, 1992.¹ In the meantime, the applicant filed an I-485 Application to Register Permanent Residence or Adjust Status Application in 1991, seeking to adjust status to that of a permanent resident under INA section 249, 8 U.S.C. § 1259. Records reflect Legacy INS opened an investigation and found that the applicant attempted to obtain permanent residency by fraudulent means by using unverifiable information, tendering fraudulent affidavits, and claiming to work for companies that did not exist in an effort to prove he entered the United States before January 1, 1972, and has resided in the United States continuously since entry. Under oath, the applicant stated he paid attorney Gail Fuller \$1,500 to obtain his permanent residence. He further admitted:

She gave me the Immigration forms to fill out. She wanted me to fill out certain parts of the form. I filled out my name and address, and other information. She told me that I would have to get a new passport with a different date of birth, so that it would not be the same date of birth that was on my B-1 visa information. I obtained a passport with the date of birth of 7/7/57, and this was the date of birth that I used on my immigration forms. She gave all the papers that are in the file that have to do with my employment. She told me to study them for when we go to Immigration, so that [is] what I did. She told me that I would have to tell the Examiners whatever was on the forms. To keep with that information. She told me that this is the only way I would be able to get a green card. She made up all the information in this file.

Sworn statement, December 6, 1991. Despite these admissions, counsel for the applicant states the applicant "does not concede that CIS was correct in finding that he is inadmissible to the U.S. [for misrepresentation]... any fraud included in his INA § 249 adjustment of status application should be imputed to his prior counsel [redacted] should be considered responsible for any misrepresentations rather than an individual such as [redacted] who had very little experience with the U.S. immigration system at the time his registry application was filed." *Brief in support of appeal*, July 1, 2009. Counsel and the applicant fail to recognize the applicant's own active role in the misrepresentation. At the time he filed this application for permanent residence, he was a 30 year old adult,² and as such is responsible for his own actions and decisions. His admissions show he obtained a fraudulent passport, and made the decision to

¹ After his 1992 departure, the record reflects the applicant entered the United States without inspection in September or October 1996, and he filed an application seeking to adjust status under section 245(i) of the Act on September 30, 1997, one day after he married a U.S. Citizen.

² This calculation is based on a birth certificate submitted with his second I-485 application, not on the date of birth he gave in his 1991 sworn statement.

actively present information he knew was not truthful in an effort to obtain his permanent residence. Lastly, by signing the I-485 application form he certified “under penalty of perjury under the laws of the United States of America, that the above information is true and correct.” *I-485 application form*, November 2, 1990. The AAO acknowledges that [REDACTED] is responsible for her part in this fraud; however, we affirm the Field Office Director’s finding that the applicant is responsible for his own conduct, in that he was “complicit in the fraudulent acts of [his] previous attorney. [The applicant] knew that he was committing fraud and continued to participate in the conspiracy.” *I-485 Denial*, May 6, 2009. Moreover, although the applicant swore under oath he was born on December 9, 1952, he used July 7, 1957 as his date of birth on the 1991 application for adjustment of status, as previously discussed, and July 7, 1960 on his 1997 and 2008 applications for adjustment of status.³ The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure a benefit under the Act through fraud or misrepresentation. The applicant’s qualifying relative is his U.S. Citizen spouse, [REDACTED] whom he married in 2008.⁴

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

³ The applicant submitted a birth certificate as evidence he was born on July 7, 1960.

⁴ This is the applicant’s second marriage. The applicant was previously married to [REDACTED], who filed an I-130 Petition for the applicant. That Petition was denied in 2006, and the parties divorced in 2007.

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 record contains references to hardship the applicant’s spouse’s child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s spouse’s children as a factor to be considered in assessing extreme hardship. As recognized by counsel in the brief, the applicant’s spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant’s spouse’s child will not be separately considered, except as it may affect the applicant’s spouse.

Counsel asserts the applicant’s spouse would suffer hardship which “exceeds the typical example of hardship faced by spouses of those who are to be deported.” *Brief in support of appeal*, July 1, 2009. Counsel explains she “faces a unique financial hardship. He assists her with money for school, rent, daily living expenses, and to provide for her child.” *Id.* The applicant’s spouse affirms her income consists of “about \$10 per hour currently working for Devereux in Broomall,

Pennsylvania as a direct care supporter for the mentally challenged and disabled” and the biological father of her child “contributes about \$300 a month toward child support per court order.” *Affidavit of applicant’s spouse*, April 15, 2009. Her 2007 income tax returns show an adjusted gross income of \$15,010, and a payslip confirms an hourly wage of \$10.32. *Form 1040A U.S. Individual Income Tax Return, 2007, see also Devereux payslip*, March 20, 2009. There is nothing in the record indicating the applicant’s employment or income, or how the applicant contributes financially to the household. With regard to expenses, the applicant’s spouse claims she “owe[s] approximately \$3,500 in student loans. When all [her] loans are due [she] anticipate[s] that [her] husband will help [her] pay for them. He pays for almost everything including rent payments (about a \$1,000 a month), car payments (about \$400 a month), utility bills, and daycare payments. It will be a financial hardship to [her] if [her] husband is deported as [she] would have to fully shoulder the costs associated with [her] son and living expenses” herself. *Affidavit of applicant’s spouse*, April 15, 2009. The applicant’s spouse submits a Wachovia statement as evidence of her \$3,500 student loan, the upper half of a printout from Toyota financial services showing \$800.24 as the total amount due, and a printout from www.Travelocity.com as evidence of the cost of a flight to Nigeria.

The applicant’s spouse discusses her psychiatric and emotional hardship, stating she “love[s her] husband and he wouldn’t be there to talk to [her] if he were deported. He is there for [her] anytime that [she] need[s] him. It’s going to be a nightmare to [her] if [she] wake[s] up and he’s not there next to [her].” *Affidavit of applicant’s spouse*, April 15, 2009. Furthermore, the applicant’s spouse explains her “father went back to Nigeria to visit temporarily in 2008 and he was shot dead by people trying to rob him. The people who killed [her] father knew him and they would know [her] if [she] returned to Nigeria, which causes [her] great concern and fear.” *Id.* These facts are included in a psychiatric evaluation. Therein, [REDACTED] concludes the applicant’s spouse “is suffering from Traumatic Stress related to the loss of her father. This is currently being exacerbated by her husband’s potential deportation. She is currently suffering from significant anxiety and she is at imminent risk of entering into a Major Depressive Disorder which would effect her functioning in all areas of life.” *Psychiatric evaluation*, April 14, 2009.

The applicant’s spouse contends she would also suffer because the applicant would not be able to help raise her child. She explains the child’s biological father “has only met the child a few times and [the applicant] is like the real father of the child... It would be very tough on [her] as a mother if [the applicant] is deported because [her] child is getting to the point where he is coming to know him and recognize him as his father. If he is deported at this stage it would be so difficult for [her] to explain to [her] child where [the applicant] is and why he is not around. [Her] husband does everything with [her] son. It would be very difficult on [her] if the two of them were separated from each other for any point [in] time.” *Affidavit of applicant’s spouse*, April 15, 2009.

The applicant’s spouse lastly asserts she cannot relocate to Nigeria. She cites her father’s violent death, adding she would have no opportunity in Nigeria, she returns to Nigeria very infrequently, and she has no connection with or family in Nigeria. *Id.*

The applicant's spouse claims she would suffer from financial hardship if the applicant were deported. The applicant submitted evidence showing that her yearly income is \$15,010, and that she makes \$10.32 per hour. *See Form 1040A U.S. Individual Income Tax Return, 2007, see also Devereux payslip, March 20, 2009.* Although the applicant's spouse alludes to the applicant's financial contributions, supporting evidence of his income was not submitted. With respect to expenses, the applicant's spouse claims she "owe[s] approximately \$3,500 in student loans... [the applicant] pays for almost everything including rent payments (about a \$1,000 a month), car payments (about \$400 a month), utility bills, and daycare payments." *Affidavit of applicant's spouse, April 15, 2009.* The record does not contain any evidence of utility bills or daycare payments, and the only documentation of a car payment is an incomplete copy of an online printout showing a payment of \$800.24 due. *See Toyota statement, May 4, 2009.* This incomplete copy does not confirm what the monthly payment is, or the total amount owed. Moreover, although the applicant's spouse claims the family pays \$1,000 a month in rent, evidence in the record shows the applicant and his spouse are actually subletting from a person named [REDACTED] and that the family pays \$500 a month in rent. *See Affidavit of [REDACTED] in support of [REDACTED] January 7, 2009.* With regard to the remainder of the monthly bills, [REDACTED] explains the applicant and his spouse "contribute half of the cable bill every month... half of the electric bill every month... and [telephone] payments are based on usage." *Id.* There is no evidence in the record on the amount of these monthly payments. As such, the record does not contain sufficient evidence of the spouse's or the applicant's household expenses to support assertions of financial hardship. The applicant further fails to provide any evidence regarding his own employment and earnings, and whether he would be able to contribute financially if he relocated to Nigeria. Without details of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face. Even if the applicant submitted sufficient evidence of financial hardship, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS, 794 F.2d 491, 497 (9th Cir. 1986)* (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.").

In the psychiatric evaluation, [REDACTED] asserts the applicant's spouse "is suffering from Traumatic Stress related to the loss of her father. This is currently being exacerbated by her husband's potential deportation. She is currently suffering from significant anxiety and she is at imminent risk of entering into a Major Depressive Disorder which would effect her functioning in all areas of life." *Psychiatric evaluation, April 14, 2009.* [REDACTED] concludes the "potential deportation of [REDACTED] represents an extreme and unusual hardship on [REDACTED]. It is recommended that [REDACTED] be allowed to remain in the United States to provide support and prevent [REDACTED] from entering into a Major Depressive Disorder." *Id.* It is noted that [REDACTED] does not address caring for the applicant's spouse's traumatic stress and anxiety; he only conjectures about the prevention of major depressive disorder. His inference is also not further explained or supported. Although the evaluation notes that the applicant's wife may become depressed and has some anxiety and traumatic stress, nothing in the record shows

that her emotional / psychiatric hardship goes beyond that normally experienced by family members of inadmissible aliens.

Counsel correctly states that AAO should consider hardship to the applicant's child as it may affect the applicant's spouse. As evidence of such hardship, the applicant's spouse explains the applicant is like a real father to her child, the applicant does everything with her child, and that it would be difficult for her if the two were separated. *Affidavit of applicant's spouse*, April 15, 2009. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). In this case, although the AAO acknowledges there will be some difficulty as a result of the separation from the applicant and his spouse, as well as the applicant and the child, there is insufficient evidence the hardship described in the spouse's declaration is uncommon and rises to the level of extreme hardship.

Lastly, the applicant's spouse claims she cannot relocate to Nigeria. She explains this is due to the trauma based on her father being killed in Nigeria, her feeling that she would have no opportunity in Nigeria, her lack of family ties in Nigeria, and difficulties in adapting to life in Nigeria and raising a child in Nigeria. *Affidavit of applicant's spouse*, April 15, 2009. A travel warning cautions:

The U.S. Department of State warns U.S. citizens of the risks of travel to Nigeria. We continue to recommend avoiding all but essential travel to the Niger Delta states of Akwa Ibom, Bayelsa, Delta, and Rivers; the Southeastern states of Abia, Edo, Imo; the city of Jos in Plateau State; Bauchi and Borno States in the northeast; and the Gulf of Guinea because of the risks of kidnapping, robbery, and other armed attacks in these areas. (Please also see the Crime Section below.) Due to the latest safety and security risk assessments, the U.S. Mission now requires advance permission and justification as mission-essential for U.S. official travel to all northern Nigerian states, in addition to the locations listed above.

U.S. Department of State Travel Warnings, September 19, 2011. The record confirms the applicant's spouse's father died of gunshot injuries in Abia, a state which is mentioned in the travel warning. *See id.*, *see also report of death of an American citizen abroad*, December 12, 2008. The psychiatrist adds she "suffers from traumatic stress related to the loss of her father." *Psychiatric evaluation*, April 14, 2009. Additionally, the U.S. Department of State corroborates that women are overall marginalized economically, and experience considerable economic discrimination under traditional and religious practices. *U.S. Department of State 2010 Human Rights Report: Nigeria*, April 8, 2011. When considering the applicant's spouse's potential financial hardship, the risks of traveling to Nigeria, and the fear and anxiety caused by her father's recent, violent death in Nigeria, the AAO concludes that the applicant has established extreme hardship upon his spouse's relocation to Nigeria.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if she 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 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 a 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.