

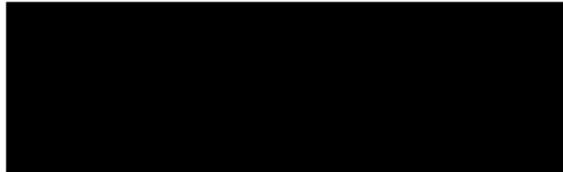
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



H5

DATE: Office: CHICAGO, IL

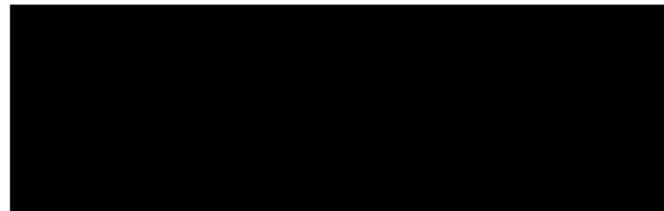
FILE:

IN RE: NOV 23 2011

Applicant:

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:



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 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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Nigeria who used a Spanish passport belonging to his brother to procure admission to the United States under the Visa Waiver Program in November, 2000. The applicant has been 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). He 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 Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), date of service March 8, 2007.

On appeal, counsel asserts that USCIS made incorrect findings of fact, misapplied the law and that new evidence is being submitted in support of the appeal. *Form I-290B*, received June 1, 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 Spanish passport belonging to his brother to procure admission to the United States under the Visa Waiver Program on or about November 15, 2000. Thus he entered the United States by materially misrepresenting his identity. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest the finding of inadmissibility on appeal.

The record includes, but is not limited to: briefs from counsel; statements from the applicant's spouse; a statement from the applicant; statements from friends and associates of the applicant and his spouse; a psychological evaluation of the applicant's spouse and her son by [REDACTED] Ph.D., dated November 15, 2007; marital and custody records from the applicant's spouse's prior marriage; a behavioral evaluation and educational records pertaining to the applicant's step-son; a copy of a mortgage approval letter for a residential property to the applicant's spouse; a copy of a quit claim deed for a residential property adding the applicant to the title; a police records check; letters from members of the applicant's church; employment verification letters for the applicant and his spouse; country conditions materials on Nigeria, including a section from the CIA World Factbook, the Country Report on Human Rights Practices by the U.S. State Department's Bureau of Democracy, Human Rights and Labor; copies of tax returns for the applicant's spouse for the years

2005 and 2006; copies of bank statements; copies of training certificates for the applicant's spouse; photographs of the applicant, his spouse and step-son; copies of medical insurance payment receipts for the applicant's spouse; and a statement from the applicant's spouse's employer, dated August 5, 2009, informing her that her position is being eliminated. 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 his step-child 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.

Counsel asserts on appeal that the applicant's spouse would experience extreme hardship upon relocation to Nigeria. *Brief in Support of Appeal*, received June 1, 2009. The record contains several statements from the applicant's spouse explaining that she would experience extreme hardship if she relocated to Nigeria due to severing her family ties in the United States, not having any family ties in Nigeria, and her unfamiliarity with the language, and customs in Nigeria. The applicant's spouse also expresses concern regarding country conditions in Nigeria including the depressed economy, corruption and crime rate. *Statement of the Applicant's Spouse*, undated. She further asserts that her son, who has been raised in the United States, would be impacted by having to learn a new language and adjusting to the environment in Nigeria. Counsel also asserts that the

applicant's spouse's son is a special needs child, and that he would lose his benefits if he relocated from the United States, and that, in any event, he would most likely not be allowed to relocate due to custody agreements with the child's father. *Brief in Support of Appeal*, received June 1, 2009.

The applicant's spouse and counsel have both asserted that she has several medical issues, including chronic back pain, depression and uterine fibroids. Counsel asserts that the Field Office Director was incorrect in concluding that the applicant's spouse would not experience physical and medical hardships, either upon relocation due to the conditions in Nigeria or upon separation if the applicant was not there to assist her with household chores and income. *Statement in Support of Appeal*, received, June 1, 2009. The applicant's spouse has asserted that she has permanent back problems due to a car accident, anemia and depression. *Statement of the Applicant's Spouse*, received June 1, 2009.

On appeal counsel submits additional evidence with regard to the applicant's spouse's claimed medical conditions. Counsel asserts that the applicant's spouse has sought alternative treatments to explain why her claims of health issues are not well documented, and asserts that submitted documents establish that she has been prescribed Lexapro for depression, has been treated by a chiropractor for her back pain, and has had a uterine cyst removed which has prevented her from getting pregnant. The record contains a document from United Healthcare called a Certificate of Creditable Coverage. This document explains the benefits of the medical insurance policy, and does not establish what medical conditions, if any, the applicant's spouse has been diagnosed with. Other records include benefit statements indicating that the applicant was treated by a chiropractor on November 15, 2007, had an eye exam in May 2005, was given a single prescription for Lexapro on June 30, 2009, and was given a prescription for Fexofenadine HCL. There are also a number of medical data records in the record which appear to relate to uterine cyst removal and/or fertility treatments. These records contain notes which are largely illegible and there is no document summarizing the contents of these records. Although these records indicate that the applicant has been treated on occasion and given some medication, they are not sufficiently probative to establish that the applicant's spouse suffers from chronic back pain, anemia or depression. The records provided do not provide any detail on the severity or frequency of the applicant's spouse's symptoms. Nor do they explain what medical treatment the applicant's spouse requires, if any. The AAO finds that the applicant has failed to establish that the applicant's spouse suffers from any significant medical conditions, or that the applicant's spouse would be unable to receive treatment for any such conditions in Nigeria.

The record contains country conditions materials on Nigeria. In addition, the AAO takes note of the fact that the U.S. Department of States, Bureau of Consular Affairs, issued an updated Travel Warning for Nigeria on October 13, 2011. The Travel Warning states, in part:

The U.S. Department of State warns U.S. citizens of the risks of travel to Nigeria, and continues to recommend U.S. citizens avoid 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. Violent crime committed by individuals and gangs, as well as by persons wearing police and military uniforms, remains a problem throughout the country.

Although there is no evidence as to how the applicant's spouse would be specifically impacted by conditions in Nigeria, the AAO notes the applicant's spouse's concerns regarding conditions in Nigeria. The AAO also notes the applicant's spouse's lack of familiarity with the culture, customs and environment in Nigeria. In addition, the AAO notes the presence of the applicant's spouse's family ties in the United States, as well as the lack of any family ties in Nigeria. These impacts will be given consideration when aggregating the hardships to the applicant's spouse upon relocation.

In a letter dated October 6, 2005, the applicant's spouse states that. Although she has physical custody of her son, moving out of the state would cause a "legal battle" with her son's biological father. The record contains a copy of the applicant's spouse divorce decree which outlines the custody arrangement between the applicant's spouse and her former husband. This document confirms that the applicant's spouse and her former husband have joint legal custody of their child and that, although the applicant's spouse has primary physical custody, her former husband has the ability to contest any out-of-state move. The AAO notes the applicant's spouse's concerns regarding the difficulty in relocating her son to Nigeria.

An examination of the record indicates that the applicant's spouse would experience several hardship impacts upon relocation, including the severance of family ties in the United States, the difficulty of relocating her son, and the cultural impacts due to her unfamiliarity with the culture, language and environment. The AAO finds that, when the hardship impacts in this case are examined in the aggregate with the normal impacts of relocation, they do rise above the common hardships experienced by the relatives of inadmissible aliens, and as such constitute extreme hardship.

However, the AAO finds that the applicant has failed to establish that a qualifying relative would experience extreme hardship as a result of separation. In a letter submitted in support of the instant appeal, the applicant's spouse asserts that, if she remains in the United States without the applicant, she will lose her "mental, emotional, and financial support." She states that, since the applicant's Form I-601 was denied she has had "problems of insomnia, depression, suicidal tendency marital strain, and inability to be an effective parent or normal functions." The applicant's spouse further states that she is "going to a counselor in order to maintain a level of sanity and avoid committing suicide." *Letter of the Applicant's Spouse*, dated July 7, 2009.

There is no evidence that the applicant's spouse was "going to a counselor" at the time of her July 7, 2009 statement. However, the record does contain a Clinical Evaluation from [REDACTED], which is dated November 15, 2007. The evaluation is based on an interview with the applicant and his spouse which occurred on November 7, 2007 and an interview with the applicant's spouse and her son which occurred on November 14, 2007. In the evaluation, [REDACTED]

summarizes the concerns expressed by the applicant's spouse and states "[i]t is my clinical recommendation that this family be permitted to remain together without separation. A separation would compromise the emotional[] integrity of both [the applicant's spouse and her son], who are, each in their own way, dependent on the stability and strength of [the applicant.]" The evaluation does not indicate that the applicant's spouse is or is likely to become depressed or suicidal. While the AAO acknowledges [redacted] recommendation, the evaluation does not establish that the emotional difficulties that the applicant's spouse would experience as a result of separation go beyond the difficulties normally experienced by family members of inadmissible aliens.

Counsel asserts that the applicant's step-son suffers from ADHD and is a special needs child and that the applicant's spouse needs the applicant's support to care for her child.

The AAO notes that children are not qualifying relatives in these proceedings, nonetheless, hardship to them may be considered insofar as it impacts the qualifying relative. The record contains a letter dated May 15, 2003 from [redacted]. The letter provides the results of a behavioral assessment of the applicant's step-son. The letter states "Teacher results indicate a very serious behavior concern for hyperactivity, impulsivity and restlessness" and "Parent results indicate a concern for hyperactivity and impulsive behavior." This letter does not appear to diagnose the applicant's stepson with ADHD. Instead, it states that no single evaluation should be the sole determinant of whether a child is identified as having a disorder, that the evaluation is a tool to be shared with the child's physician or behavioral specialist, and that ADHD or ADD is a medical diagnosis. There is nothing in the record indicating that the applicant's spouse's son has been diagnosed with ADHD or ADD. However, as noted above, [redacted] concluded that the emotional integrity of the applicant's stepson would be compromised in the applicant's absence. The AAO acknowledges that the applicant's stepson may experience difficulty as a result of separation from the applicant. However, the record does not establish that any difficulties that the applicant's stepson might experience would result in uncommon hardship for the applicant's spouse.

With respect to financial hardship, counsel states that the applicant has been employed and contributing to the family's monthly expenses and that the applicant's spouse could not meet these expenses without the applicant's assistance. Counsel also states that, without the applicant's assistance, his spouse would have to sell their home and move to a cheaper residence and that "any financial disruption would cause bankruptcy."

Counsel also asserts on appeal that the applicant has lost her job and that the applicant is the sole financial provider for his spouse and their child. The record contains a copy of employment termination letter dated August 5, 2009. The letter states that the termination was due to the fact that the applicant's spouse's position had been eliminated and that the applicant's spouse would be eligible for unemployment benefits and a continuation of her health insurance through COBRA. The record shows that the applicant's spouse has a bachelor's degree and has had several jobs during her career, indicating that she is capable of finding other employment in the United States.

The record is not clear as to the applicant's financial contributions to the household. The record contains tax returns from 2005 and 2006 which appear to list only the applicant's spouse's income. There is a letter dated October 19, 2007 confirming the applicant's employment and salary with [REDACTED]. However, the letter indicates that the applicant had only been employed with the company since April, 2007 and there is no updated employment information for the applicant. Nor is there evidence regarding the applicant's spouse's financial obligations or expenses. Thus, it cannot be determined that the applicant's spouse would be unable to meet her financial obligations in the applicant's absence. As such, the AAO finds that the applicant has failed to establish that his spouse would suffer financial hardship as a result of separation from the applicant.

The evidence submitted to corroborate counsel's assertions is not sufficiently probative to establish extreme hardship to a qualifying relative upon separation. The AAO acknowledges that the applicant's spouse may experience some emotional hardship if she remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, even when combined with other hardship factors, will be extreme. The record does not support any uncommon financial impact upon his departure, nor is there sufficient probative evidence to establish that the applicant's spouse will suffer physical or medical hardships which, even when considered together, will rise to the level of extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship articulated in this case, based on the evidence in this record, does not rise above the common result of removal or inadmissibility and thus does not constitute extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if he/she/they 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 in 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.

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 not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.