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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

115

DATE: **APR 05 2012**

Office: NEW ORLEANS

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, New Orleans, Louisiana. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant is a native and citizen of Nigeria who procured entry to the United States in 1999 by presenting a fraudulent passport. The applicant was thus found 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), for having procured entry to the United States by fraud or willful misrepresentation. The applicant does not contest this finding of inadmissibility. Rather, he is applying for a waiver of inadmissibility pursuant to sections 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen mother, his U.S. citizen spouse, his stepchild, born in 1999, and his biological child, born in 2007 (hereinafter referred to as "the children").

The acting field office director found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting Field Office Director*, dated October 7, 2009.

In support of the appeal, counsel for the applicant submits the following: an affidavit from the applicant's U.S. citizen mother; evidence of the applicant's mother's current employment; an affidavit from the applicant's U.S. citizen spouse; evidence of the applicant's spouse's current employment; copies of U.S. birth certificates for the applicant's children; medical documentation pertaining to the applicant's spouse and evidence of a request for advanced leave; an affidavit from the applicant's sibling; evidence of the applicant's employment in the United States; and articles regarding the problematic economic conditions in Mississippi. The entire record was reviewed and considered in rendering this decision.

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 Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), waive the application of clause (i) of subsection (a)(6)(C) in the case of an 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 (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...

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's U.S. citizen spouse and mother are the only qualifying relatives in this case. Hardship to the applicant or the children can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant's U.S. citizen spouse contends that she will suffer emotional and financial hardship if she relocated to Nigeria to reside with the applicant due to his inadmissibility. To begin, the applicant's spouse explains that she has never traveled outside of the United States and would thus experience hardship having to adjust to a new country, culture and customs. The applicant's spouse further details that she would not be able to obtain gainful employment as she does not speak the languages of Nigeria, thereby causing her financial hardship. Moreover, the applicant's spouse contends that Nigeria is an extremely unstable country and she would thus be fearful for her and her children's lives. Finally, the applicant's spouse explains that her child from a previous relationship is twelve years old and were she to relocate abroad, her child would suffer due to separation from her biological father and her social and academic circles, thereby causing her hardship. *Affidavit of* [REDACTED] dated November 25, 2009.

The record establishes that the applicant's elder daughter, born in the United States, is integrated into the United States lifestyle and educational system. The Board of Immigration Appeals (BIA) found that a fifteen-year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the applicant's child at this stage of her education and social development and relocate her to Nigeria would constitute extreme hardship to her, and by extension, to the applicant's spouse, a qualifying relative in this case. Alternatively, relocating abroad without her elder child would cause the applicant's spouse emotional hardship due to long-term separation. In addition, the record reflects that the applicant's U.S. citizen spouse would relocate to a country with which she is not familiar, leaving behind her gainful employment, her health care coverage, her community, her church, and her long-term ties to the United States. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

In regards to hardship with respect to the applicant's U.S. citizen mother relocating abroad to reside with the applicant due to his inadmissibility, this criterion has not been addressed. As such, it has not been established that the applicant's mother would experience extreme hardship were she to relocate to Nigeria, her native country, to reside with the applicant.

With respect to remaining in the United States while the applicant resides abroad due to his inadmissibility, the applicant's spouse explains that she has married her soul mate and were he to relocate abroad, she and the children would experience hardship due to long-term separation from him. *Affidavit of* [REDACTED] dated August 27, 2009. In addition, the applicant's spouse asserts that she is currently on family medical leave from her job as a result of a high risk pregnancy. She contends that she needs her husband by her side to help care for her and the children and support the family financially as she will not have any income for approximately 5 months due to bed rest and maternity leave. Moreover, the applicant's spouse outlines that although she is gainfully employed, were her husband to relocate abroad the family income would be cut in half and she would thus be unable to support two children, with a third on the way, including paying the rent, the car note, food, school fees and other essentials. *Supra* at 1-2. As for the applicant's mother, she details that her son helps her a lot and she would experience hardship without him. She explains that he pays for her medicines, goes to the grocery store for her, takes her to work and church and acts as her interpreter and translators on many occasions. She also notes that she would be worried about her son's safety and well-being in Nigeria. *Affidavit of* [REDACTED] dated November 25, 2009.

The record contains no supporting evidence concerning the emotional hardship the applicant's mother and spouse assert they would experience were they to reside in the United States while the applicant relocated abroad due to his inadmissibility. Further, in regards to the applicant's spouse's referenced medical conditions, no documentation has been provided from the applicant's spouse's treating physician outlining her current conditions, the severity of the situation, any limitations on her ability to work and care for herself and her children, and what specific hardships she would experience were her husband to reside abroad. As for the applicant's mother's need for her son to help her in terms of providing assistance, transportation, interpretation and translation, it has not been established his absence specifically would cause her hardship. Finally, with respect to the financial hardship referenced by both the applicant's spouse and mother, although articles have been provided regarding poverty in Mississippi, the information is general in nature. No financial documentation has been provided outlining the applicant's spouse's and mother's expenses, assets and liabilities, to support their assertion that without the applicant's physical presence in the United States, they will experience financial hardship. The AAO notes that both the applicant's spouse and his mother are gainfully employed. Alternatively, it has not been established that the applicant is unable to obtain gainful employment in Nigeria and assist his wife and mother should the need arise. 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)). Finally, in regards to the country conditions in Nigeria referenced by the applicant's mother, no documentation has been provided establishing that the applicant, and by extension, his mother, would experience extreme hardship were he to relocate to Nigeria.

The AAO recognizes that the applicant's spouse and mother will endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States while the applicant relocates abroad, is typical to individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse or mother will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse or child is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's or mother's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's and mother's situation, the record does not establish that the hardships they would face rise to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility, 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. The waiver application is denied.