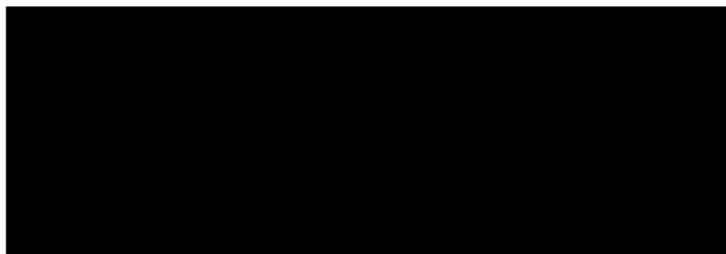


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090
**U.S. Citizenship
and Immigration
Services**



tlg

DATE: **AUG 08 2012**

OFFICE: ACCRA, GHANA



IN RE:

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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 record reflects that the applicant is a native and a citizen of Nigeria who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure a visa by willful misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant does not contest the finding of inadmissibility. Rather, she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband in the United States.

The Field Office Director concluded 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. *See Decision of the Field Office Director*, dated February 19, 2010.

On appeal, the applicant asserts that the documentary evidence demonstrates that her husband will continue to suffer extreme health, psychological, emotional, and financial hardship because of her inadmissibility. *See Applicant's Statement in Support of Notice of Appeal or Motion* (Form I-290B), dated April 15, 2010.

The record includes, but is not limited to: letters of support; identity, medical, and financial documents; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6) of the Act provides in pertinent part:

(C) Misrepresentation.-

(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 Act is inadmissible.

...

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The Board of Immigration Appeals (BIA) has held that for immigration purposes, the term *fraud* "is used in the commonly accepted legal sense, that is, as consisting of false representations of a material fact made with knowledge of its falsity and with intent to deceive the other party." *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). The "representations must be believed and acted upon by the party deceived to the advantage of the deceiver." *Id.*

The intent to deceive is not a required element for a willful misrepresentation of a material fact. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The relevant standard for a willful misrepresentation is knowledge of falsity. *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir., 1995).

In *Kungys v. United States*, 485 U.S. 759 (1988), the Supreme Court found that the test of whether concealments or misrepresentations are “material” is whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, the legacy Immigration and Naturalization Service’s (now the U.S. Citizenship and Immigration Services (USICS)) decisions. Additionally, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements for a material misrepresentation are as follows:

A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either:

- a. the alien is excludable on the true facts, or
- b. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien’s eligibility and which might well have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (AG 1961).

The Field Office Director found the applicant inadmissible for attempting to procure a nonimmigrant visa to the United States in May 2004 by presenting a passport that indicated her identity as [REDACTED], born on August 21, 1975; an identity to which she did not have a legal claim. The AAO notes that the record indicates that the applicant may have been married to Mr. [REDACTED] according to the traditions and customs in Nigeria and was issued a passport identifying her married name. Accordingly, the AAO finds that the applicant did not misrepresent her identity when she applied for a nonimmigrant visa in 2004.

However, the AAO does find that the applicant misrepresented her eligibility to be issued an immigrant visa as she failed to disclose on her immigrant visa application that she previously was denied a nonimmigrant visa. And, the applicant’s concealment of the denial was material as it tended to shut off a line of inquiry concerning her eligibility to be issued an immigrant visa. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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

- (1) The Attorney General [now Secretary of Homeland Security (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.

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. Hardship to the applicant 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. 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. at 813.

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 contends that her spouse will suffer extreme emotional, physical, medical, and financial hardship in the applicant's absence as the spouse: has been stressed, which has manifested in mental and physical conditions; would be unable to share the moments of any potential pregnancy together and would have to pay out-of-pocket for the costs associated with a pregnancy and the spouse's healthcare; has no one to assist him with his daily activities; and has been financially drained as he has traveled often to Nigeria and has been the sole financial provider for maintaining their separate households. The spouse indicates that he and the applicant have been married for eight years, but have not lived together as husband wife; enjoying love, desire, happiness, hopes, and plans. He also indicates that his blood pressure continues to fluctuate because of his concern for the applicant's fate, and that they have endured through their trials and tribulations because of their love and appreciation for one another.

The evidence on the record is sufficient to establish that the applicant's spouse has experienced symptoms of Anxiety and difficulty sleeping and has been prescribed medication for his symptoms. And, because of his symptoms, he may experience some emotional and medical hardship in the applicant's absence. However, the AAO finds that the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The medical documentation in the record only provides a general statement about the spouse's mental health and its cause: "... Unfortunately he has developed significant emotional distress as the result of the inability of his wife, [the applicant] to be permitted to immigrate to the United States. He is having symptoms of Anxiety, including difficulty sleeping." *Medial Letter Issued by* [REDACTED], dated March 10, 2010. The record does not include a discussion concerning the methods or evaluations used to make the determination that the spouse is suffering from Anxiety and that the applicant's inadmissibility is the cause of the spouse's symptoms. Moreover, the record does not include any discussion concerning the severity of the spouse's mental health that would suggest that he would suffer from depression as speculated by the applicant, or that he is attending ongoing therapy sessions as indicated by the applicant. As the record lacks an explanation in plain language of the exact nature and severity of the applicant's spouse's mental health or any ongoing treatment, the AAO is not in the position to reach conclusions concerning the severity of a mental health condition or the treatment needed.

Additionally, the AAO notes that the record indicates that the spouse is employed currently by Corporation for Justice Management, but does not include any evidence to show in what capacity or his salary. Also, the applicant has a diploma in Computer Science, issued by the Lagos City Computer College in February 1995. However, the record does not include any documentation of the employment or labor market conditions in Nigeria, and the applicant's inability to contribute to her and the spouse's households as a degree-holder. Further, the record includes bills for telephone calls to Nigeria and transportation costs from Connecticut to JFK Airport, as well as receipts for the spouse's monthly rent. However, there is not sufficient evidence in the record that the spouse would be unable to support himself in the applicant's absence. Moreover, the applicant and her spouse have lived separate and apart throughout their marriage. Accordingly, separation does not constitute a change in the spouse's and the applicant's circumstances, and it does not appear that the applicant has ever actually helped the spouse with maintaining his household in the United States. Thereby, the assertions of hardships that the spouse may experience without the applicant's assistance are speculative.

The AAO notes the concerns regarding the applicant's spouse's emotional, physical, medical, and financial hardship that he may experience in the applicant's absence, but finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of separation from the applicant.

The applicant contends that her spouse will suffer extreme hardship if he were to relocate to Nigeria to be with her as he has lived in the United States since 1975, and it would be difficult for him to leave the job that he loves and to find a job in Nigeria given its economic and healthcare conditions as well as its political, physical, and social environments.

The record is sufficient to establish that the applicant's spouse will suffer hardship if he were to relocate to Nigeria with the applicant. The spouse has lived continuously in the United States for almost 40 years, and has been a U.S. citizen for over 20 years. He maintains employment and strong social ties. And, although the evidence in the record does not include social, political, or economic conditions in Nigeria and how they would impact the spouse, in the aggregate, the AAO finds that the applicant's spouse will suffer extreme hardship if he were to relocate to Nigeria because of his length of residence, employment, and strong social ties to the United States, considered along with the normal hardships associated with relocation.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. 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.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises 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 her 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 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.

Additionally, the AAO notes that the record includes discrepancies concerning the applicant's previously referenced traditional marriage that may not have been available or considered when the Field Office Director issued his decision concerning the applicant's waiver application. Although the discrepancies may have bearing on the applicant's eligibility for future immigration benefits, the AAO will not reach a discussion on the merits of this issue as the appeal will be dismissed for the above-stated reason.

ORDER: The appeal is dismissed.