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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**



[REDACTED]

H5

DATE: **AUG 24 2012** OFFICE: MILWAUKEE, WISCONSIN 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 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, Milwaukee, Wisconsin, 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 of Togo and citizen of Togo and 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 procured admission through 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, through counsel, does not contest this finding of inadmissibility on appeal.¹ Rather, he seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182 (i), in order to reside with his wife and son 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 May 24, 2010.

On appeal, counsel asserts that the U.S. Citizenship and Immigration Services (USCIS) misapplied the standard for extreme hardship and failed to properly consider the evidentiary documentation submitted in support of the applicant's waiver application. Counsel further asserts that USCIS failed to consider, in the aggregate, the mental, physical, and financial harm that the applicant's spouse would suffer in light of country conditions information and the spouse's personal experiences in Nigeria. *See Form I-290B, Notice of Appeal*, dated June 10, 2010.

The record includes, but is not limited to: briefs from counsel; letters of support; identity, psychological, medical, employment, financial, and academic documents; correspondence; and country conditions information.² The entire record, with the exception of the French-language documents, was reviewed and considered in rendering a decision on the appeal.

¹ The AAO notes that in his Motion to Reopen and to Reconsider the Field Office Director's denial of his *Form I-485, Application to Register Permanent Residence or Adjust Status*, the applicant did contest his inadmissibility under section 212(a)(6)(C)(i) of the Act.

² The AAO notes that the record contains some documents in the French language. 8 C.F.R. § 103.2(b)(3) states:

Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Section 212(a)(6)(C) of the Act provides, 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 Act is inadmissible.

...

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

The Field Office Director found the applicant inadmissible, in part, under section 212(a)(6)(C)(i) of the Act for having failed to disclose on his nonimmigrant visa application that he was denied a student visa two times previously.³ The applicant was subsequently admitted as an F-1 Student on August 31, 2003, valid for Duration of Status, and the record reflects that the applicant has remained to date. The record supports this finding, and the AAO concurs that this misrepresentation was material. Thereby, the AAO finds that 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 [Secretary of Homeland Security] may, in the discretion of the [Secretary of Homeland Security], 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 of Homeland Security] 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 or the applicant's son can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only demonstrated qualifying relative in this

As certified translations have not been provided for all foreign-language documents, as required by 8 C.F.R. § 103.2(b)(3), the AAO will not consider these untranslated documents in support of the appeal.

³ The AAO notes that the Field Office Director also found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act for having changed his name and country of birth when he applied for the third nonimmigrant visa. On appeal, the applicant does not contest the finding of inadmissibility, and he has not refuted that he changed his names and country of birth.

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 Id.* at 568; *In re 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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 contends that the applicant's spouse will suffer extreme emotional hardship in the applicant's absence as the spouse has overcome tremendous difficulties and has suffered from Post-traumatic Stress Disorder (PTSD) and Major Depressive Disorder, conditions which still have residual effects on her as evidenced by a recent visit from her mother. Counsel also contends that the spouse will suffer physical hardship as she has experienced malaria-related complications that require her to receive specialized medical treatment, abruption placentae, and is at high-risk from any future pregnancies. In support of his contentions, counsel references an unpublished decision of the AAO, indicating that the spouse's hardship in the instant case is more extreme than in the referenced matter as she has life threatening concerns. The AAO notes that its unpublished decisions are not binding, and accordingly, has no bearing on the present matter.

Counsel further contends that the spouse will suffer financial hardship as: the spouse and the applicant have a home mortgage, a car loan, and student loan debt; the spouse would be unable to afford childcare or to provide for her own wellbeing without impacting their son; and the applicant would be unable to provide financial support for the maintenance of separate households. Additionally, the spouse discusses how she relies on the applicant, her pastor, and a clinical psychologist to help her with her mental health, and that her depression has worsened since her initial diagnosis. She further indicates that she: receives her health insurance through the applicant's employer; is at risk of being solely dependent on the applicant's income as her temporary employment is contracted to end in September 2010; may become impoverished and have to rely on public welfare or file for bankruptcy; may not complete her law school program as she will become a single parent; and may have to put their child into daycare, which would have a destructive effect on him and become an additional financial burden to her.

Although the applicant's spouse may experience some emotional, physical, and financial hardship upon separation from the applicant, 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 record includes a psychological report, indicating that [REDACTED], diagnosed the spouse with PTSD, chronic and Major Depressive Disorder, recurrent – moderate to severe. *See Psychological Report*, dated September 29, 2009. The AAO notes that the report shows that Dr. Steinpreis interviewed the spouse on September 26, 2008, almost two years prior to the applicant's appeal, and that the report was created over a year after the spouse's interview. Moreover, the AAO notes that the report does not indicate that [REDACTED] conducted any additional interviews of the spouse to determine the spouse's mental health at the time of writing the report, and that the report does not indicate any course of treatment that

requires the applicant's participation. Additionally, the record includes a statement from the spouse's pastor, in which he states, "I'm advising her to seek the help of a Clinical Psychologist and with the support from [the applicant] and the church[,] she will get through this and win back her normal life." *Letter Issued by* [REDACTED], dated June 8, 2010. However, the record does not include any recent mental health evaluation. Absent an explanation in plain language from the treating mental health professional of any current mental health conditions and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a mental health condition or the treatment needed.

Further, the record is sufficient to establish that: the spouse has medical insurance through United Behavioral Health; the spouse experienced malaria-related complications and *abruptio placenta* during her pregnancy and the birth of her son in 2007; and women who have had a previous placental abruption are at a greater risk of having the condition again. However, the record does not include any discussion from the spouse's attending physician concerning the current impact of her previous medical conditions on her health, or addressing whether her conditions require any ongoing treatment or the applicant's participation with that treatment. Accordingly, the AAO cannot conclude that the record establishes that the spouse's physical hardship would go beyond the norm.

Also, the record is sufficient to establish that the applicant is the primary breadwinner. However, the record does not include any specific evidence of the applicant and his spouse's financial obligations, other than their automobile insurance and what the spouse self-reported, or that shows that she would be unable to support herself in the applicant's absence. And, there is no evidence of labor or market conditions concerning labor or employment opportunities as a systems analyst in Nigeria or Togo and the applicant's inability to contribute to his and his spouse's households. Accordingly, the AAO cannot conclude that the record establishes that the spouse's financial hardship would go beyond the normal consequences of inadmissibility.

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

Counsel contends that the applicant's spouse would suffer extreme hardship if she were to relocate to Nigeria or Togo to be with the applicant because: she would need access to quality healthcare because of her conditions involving malaria and *abruptio placenta*; the U.S. Department of State issued Travel Warnings for both places; and continuity in education likely would be unavailable. The applicant's spouse describes her childhood experiences as ones involving abuse and persecution by her family and community in Nigeria, and states she fears returning there. She also states that: she would not have access to advanced psychological or medical help in Nigeria for her mental and physical conditions; she would be at a greater risk of contracting diseases as she has undergone female genital mutilation (FGM); her legal education and training in the United States would not be transferable in Nigeria, and she would be unable to find a job; she fears for

her and her son's personal safety because of the criminal violence in Nigeria; and neither she nor the applicant speak or understand French, and therefore, are unable to live in Togo.

The AAO notes that the applicant's spouse is a national of Nigeria, but the record does not include any evidence that his spouse is a member of an ethnic group or tribe that practices FGM. The AAO also notes that in her report, [REDACTED] references various research studies in support of her conclusion that the applicant's spouse would experience extreme hardship if she were to relocate to Nigeria. *See Psychological Report, supra*. While the AAO acknowledges [REDACTED] credentials as a licensed clinical psychologist with certification involving substance abuse, the record does not demonstrate that [REDACTED] has the expertise to determine whether the applicant and his spouse's circumstances meet the legal standards of extreme hardship as contemplated by section 212(i) of the Act.

Nevertheless, the AAO further notes that the record reflects that the spouse maintains strong social ties in the United States, that she does not have strong ties with her parents in Nigeria, and that she does not speak French, the official language of Togo. The AAO also notes that the U.S. Department of State (USDOS) has issued a Travel Warning for Nigeria, stating: "U.S. citizens [should] avoid all but essential travel to the following states because of the risk of kidnappings, robberies, and other armed attacks: Bayelsa, Delta, Edo, Plateau, Gombe, Yobe, Bauchi, Borno, and Kano states. Violent crime remains a problem throughout the country and is perpetrated by both individuals and gangs, as well as by persons wearing police and military uniforms." *Travel Warning, Nigeria*, issued June 21, 2012. And, the USDOS reports: "... Togo has seen high levels of violent crime throughout the country. Recent incidents have included machete attacks as well as firearms-related crimes. Inflation and poverty contribute to critical crime levels in both urban and rural areas ... avoid certain areas within Lomé, especially during the hours of darkness, including public beaches, the beach road, and the Ghana-Togo border areas. Travelers should avoid beaches where no security is provided, even during daylight hours, as purse-snatchings and muggings occur regularly." *Country Specific Information, Togo*, issued April 25, 2012. In the aggregate, the AAO finds that the applicant's spouse would suffer extreme hardship if she were to relocate to Nigeria or Togo because of her strong social ties in the United States and the social and political conditions in Nigeria and Togo, 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. In re Pilch*, 21 I&N Dec. at 632-33. 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 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 application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.