

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

[Redacted]

115

Date: DEC 08 2012

Office: SAN DIEGO

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,

[Handwritten signature]

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Diego, California, and 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. The district director found that the applicant had submitted a fraudulent divorce decree pertaining to him and [REDACTED] when he applied for permanent residence based on his marriage to [REDACTED] a U.S. citizen. The district director thus found the applicant 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 fraud or willful misrepresentation. The applicant is applying for a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his current U.S. citizen spouse, [REDACTED].

The district director concluded that the applicant had 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 District Director*, dated January 27, 2011.

In support of the appeal, counsel for the applicant submits a brief and medical documentation pertaining to the applicant. 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, that:

- (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 that:

- (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...

In determining that the applicant had submitted a fraudulent divorce decree in support of his July 1994 application for permanent residence based on his marriage to Ms. [REDACTED] the district director noted that the "Forensic Document Laboratory concluded that the foreign divorce decree document is fraudulent since customary marriages are dissolved in Customary Courts, not Magistrate's. In addition, you [the applicant] started on your attachment to the Form I-601 that you agreed that the

Magistrate's Court had no jurisdiction over your previous 'customary' marriage, and it was at least 'foolish' for you to have submitted that document. It is noted that you later divorced [REDACTED] on January 21, 2000 and remarried your first spouse [REDACTED] on [REDACTED] 2000." *Decision of the District Director*, dated January 27, 2011.

With respect to the district director's finding that the applicant is inadmissible under section 212(a)(6)(C) of the Act, for fraud or willful misrepresentation, counsel contends that despite the presentation of a document that was deemed to not be genuine by the Forensic Document Laboratory, later documentation submitted by the applicant confirms that he was in fact divorced from [REDACTED] in January 1993, prior to his marriage to [REDACTED] on [REDACTED] 1993. To support the assertion that the applicant was in fact divorced in December 1993, the applicant has submitted the above-referenced document, which was determined not to be genuine. In addition, the applicant submitted a Dissolution of Marriage certificate, issued by the Customary Court, stating that "This Court affirms the dissolution of Customary marriage contracted between [REDACTED] [the applicant] and [REDACTED] . . . already dissolved on 6th January, 1993 by the Magistrate Court. . . ." *See Dissolution of Marriage*, dated November 15, 1994. Counsel asserts that the applicant should thus not be found inadmissible under section 212(a)(6)(C) of the Act. *Brief in Support of Appeal*, dated March 5, 2011.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) 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 a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). By providing a fraudulent divorce decree, which

the applicant admits was “foolish”¹, when applying for permanent residence in July 1994 based on his marriage to [REDACTED] the applicant cut off a line of inquiry regarding the validity of his marriage to [REDACTED] and his eligibility to obtain permanent residence based on this marriage. The AAO further notes that the subsequent decree of divorce from his first wife issued by the Customary Court was dated November 15, 1994, after the applicant married [REDACTED] and applied for adjustment of status based on that marriage. The AAO thus concurs with the district director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for seeking to procure an immigration benefit through fraud or misrepresentation.

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 is the only qualifying relative in this case. Hardship to the applicant or the grown 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

¹ As noted by the applicant in the attachment to his Form I-601 application, “I agree that the Magistrate’s Court had no jurisdiction over my previous ‘customary’ marriage, and it was at least foolish for me to have submitted that document....” *See Attachment to the Form I-601.*

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 remains in the United States while the applicant relocates abroad due to his inadmissibility. In an affidavit, the applicant’s spouse details that they have been married for over a decade, and were previously married for many years, and long-term separation would cause her hardship. She maintains that the applicant is a loving husband and helps with the care of her children. She notes that although the children are adults, they need their parents’ continued support. In addition, the applicant’s spouse contends that although she is gainfully employed, earning approximately \$35,000 per year, she relies on her husband’s financial contributions and without his financial support, she will experience financial hardship. See *Affidavit of [REDACTED]* dated July 19, 2010.

To begin, no supporting documentation has been provided establishing the emotional hardships the applicant’s spouse contends she will experience were her husband to relocate abroad as a result of his inadmissibility. As for the financial hardship referenced, the AAO notes that the applicant’s spouse is the primary breadwinner of the family, earning over \$35,000 per year while her husband contributes approximately \$11,000 to the household. It has not been established that the applicant’s spouse would experience extreme hardship without her husband’s financial contributions. Nor has it

been established that the applicant is unable to obtain gainful employment in Nigeria that would permit him to assist his wife financially 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, the AAO notes that the applicant's spouse has four grown children, born in 1979, 1981, 1983 and 1986, residing in the United States. It has not been established that they are unable to assist their mother emotionally and/or financially should the need arise. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

In regards to establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, the applicant's spouse contends that she cannot move to Nigeria because she would not be able to find gainful employment and her husband would not be able to obtain proper medical care for a severe chronic stomach problem that may also be responsible for painful symptoms in his chest. *Supra* at 2-3. No supporting documentation has been provided establishing that the applicant's spouse would not be able to obtain gainful employment in her native country. Moreover, with respect to the applicant's medical conditions, although a letter has been provided outlining his diagnosed conditions, the documentation does not establish what specific hardships he, and by extension, his wife, the only qualifying relative in this case, would experience were they to relocate to Nigeria, their native country. It has thus not been established that the applicant's spouse would experience extreme hardship were she to relocate abroad to reside with the applicant as a result of his inadmissibility.

The record, reviewed in its entirety, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse'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 situation, the record does not establish that the hardships she 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 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.