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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: **FEB 06 2012**

Office: ACCRA, GHANA

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: 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 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana. The matter 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 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 attempting to obtain an immigration benefit under the Act through fraud or the willful misrepresentation of a material fact. The record reflects that the applicant is the spouse of a United States citizen. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish that the bar to her admission would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated July 24, 2009.

On appeal, the applicant asserts that her spouse is experiencing extreme hardship as a result of his separation from her. She contends that her spouse's extreme hardship will be reduced by her presence in the United States to help care for his children. *Form I-290B, Notice of Appeal or Motion*, dated August 13, 2009; *see also statement from counsel*, dated August 13, 2009.¹

The record includes, but is not limited to, statements from the applicant, her spouse and her spouse's children; statements from friends of the applicant's spouse including his pastor; a letter from the applicant's spouse's employer; copies of tax returns and W-2 Wage and Tax Statements relating to the applicant's spouse; and a copy of the DS-156, Nonimmigrant Visa Application submitted by the applicant in Lagos, Nigeria, in 2002. The entire record was reviewed and all relevant evidence considered in reaching 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.

The record reflects that on June 21, 2002, the applicant applied for a nonimmigrant visa using a different name and different date of birth. At her 2009 immigrant visa interview, the applicant admitted that she

¹ The AAO notes that the applicant submitted a statement on appeal prepared by [REDACTED], a legal practitioner in Ogun State, Nigeria. The record does not, however, contain a Form G-28, Notice of Entry of Appearance as Attorney or Representative for [REDACTED] that indicates he is licensed to practice law in the United States and, pursuant to the regulations at 8 C.F.R. § 292.1(a)(6), an attorney licensed to practice law outside the United States may represent an applicant or petitioner only in matters outside the geographical confines of the United States. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to applicant.

had used a different name and date of birth to request a nonimmigrant visa in 2002. In light of the applicant's use of a different name and date of birth in an attempt to obtain a nonimmigrant visa, the consular officer denied her immigrant visa under section 212(a)(6)(C)(i) of the Act.

In the August 13, 2009 appeal brief, the applicant indicates that in 2002, at the time she applied for a nonimmigrant visa, she was in bondage to an individual who had threatened her life and that he forced her to apply for a visa, observing her during the visa application process. The applicant's statement on appeal is in direct conflict with the February 4, 2009 statement she submitted to the U.S. consulate in Lagos, Nigeria. In a statement submitted with her Form I-601 waiver application, the applicant apologized for her error and stupidity in using a different identity when she applied for a nonimmigrant visa. The applicant offered no explanation to overcome the consular officer's finding of inadmissibility under section 212(a)(6)(C)(i). Going on the record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). Accordingly, the AAO finds the applicant's misrepresentation of her identity in an attempt to obtain a nonimmigrant visa is a material misrepresentation and that she is barred from admission to the United States under section 212(a)(6)(C)(i) of the Act.

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 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 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. Hardship to an applicant or other family members 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 United States Citizenship and Immigration Services (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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

In a statement dated January 25, 2010, the applicant's spouse asserts that it has been difficult and stressful for him to take care of his two children without the applicant's help. The applicant's spouse states that he works full-time, almost seven days a week as a nurse, and that he is not able to provide for all of his children's needs, including attending their school functions, which has made his daughter very sad. He claims that his two children are still young and that they need a mother as he cannot provide everything they need. The applicant's spouse also states that he needs the applicant because it has not been easy for him, that he has been stressed emotionally, and that he has been fired from his job as a result.

In a July 4, 2009, statement, the applicant asserts that it has been difficult for her spouse to care for his two children, to provide them with guidance and support because he has to work and there is no one at home to care for them. She indicates that her spouse needs her in the United States to care for his children which will help relieve the extreme extraordinary pressure he is undergoing caring for the children alone. In a statement dated January 25, 2010, the applicant's spouse's now 20-year-old son states that he and his sister miss the applicant's motherly love, that it has been difficult for them to cope without the applicant in their lives, and that they have gone through physical and emotional distress as a result of being separated from her. The applicant's spouse's now 16-year-old-daughter asserts in a separate January 25, 2010 statement, that it has been devastating and depressing for her without the applicant, and that every time she sees her friends with their mother, she feels like she does not belong because she does not have a mother living with her. The applicant's stepdaughter states that she needs the applicant to help her through the struggles of life, peer pressure and other things.

Statements from the applicant's spouse's friends, co-workers and his pastor attest to the hardship he is undergoing without the applicant. In a February 20, 2009, statement, [REDACTED], a social worker and the applicant's spouse's co-worker, indicates that the burden of single parenting is placing undue strain on the applicant's spouse and disturbing his job performance, that he sometimes arrives late to work, that he is frequently overly tired at work, and that he easily becomes distracted by his concerns for his children's safety and well-being. In an earlier April 26, 2008 statement, [REDACTED] indicates that the applicant's spouse has talked with him about the hardship he has experienced in trying to maintain a home, provide primary care for his two children and work full time. [REDACTED], a friend of the applicant's spouse, states in a January 21, 2009 letter that it has been hard on the applicant's spouse to work and take care of his children, and that his children are sad without the applicant. [REDACTED] the applicant's spouse's pastor, states that he is aware of the applicant's immigration problems, that it has caused great hardship to her family and that it has been most difficult for her spouse to care for his children and work full time.

[REDACTED], another friend of the applicant's spouse, states in her January 21, 2009 letter to the [REDACTED] that she has known the applicant's spouse for more than four years; that he is a dedicated father; that he is devoted to the well-being of his children; and that while he is involved with their education, his children will benefit more from the presence of the applicant in the home. She indicates that the applicant's spouse's daughter is at the age where she needs a positive female role model in her life, and that his son needs the applicant to help prepare him for a wife in the future. [REDACTED] contends that allowing the applicant to come to the United States to be with her family will have a significant positive impact on the family.

The AAO notes the preceding claims regarding the impact of separation on the applicant's spouse, but does not find the record to support them. The record does not contain documentation e.g., medical records or reports to establish the applicant's spouse's current mental health, the nature and severity of the emotional hardship that he is experiencing as a result of separation, or demonstrate how separation from the applicant has affected his ability to meet his daily responsibilities including work and caring for his children. The AAO also notes that although [REDACTED] statements indicate that the hardship being experienced by the applicant's spouse is affecting his work and the applicant's spouse indicates that his stress has resulted in his firing, there is no documentation in the record to support these assertions. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)).

As to the claims made regarding the impact of separation on the applicant's stepchildren, the AAO notes that they are not qualifying relatives under section 212(i) of the Act. Any hardship to them must, therefore, be evaluated in terms of its impact on their father, the only qualifying relative in this case. However, the record contains no documentation to demonstrate the hardships that the children have suffered as a result of their separation from the applicant or that these hardships have resulted in hardship to their father. As previously noted going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *Id.*

Based on our review of the record, the AAO does not find the claimed hardship factors, even when considered in the aggregate, to establish that the applicant's spouse would experience extreme hardship if the waiver application is denied and he continues to reside in the United States without the applicant.

On appeal, the applicant asserts that her spouse's return to Nigeria with his children will result in extreme hardship because of the prevalent unemployment situation in the country.

While the AAO notes the applicant's claim regarding the impact of relocation on her spouse, we do not find the record to support her assertion. The record contains no documentary evidence, e.g., published materials on the Nigerian economy, employment conditions or cost of living that demonstrates that a return to Nigeria would result in economic hardship for the applicant's family. Again, going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *Id.* The record does not articulate what other hardships, if any, the applicant's spouse and children would experience in Nigeria. Consequently, the AAO finds that the applicant has failed to establish that her spouse would experience extreme financial hardship upon relocation.

In that the record does not contain sufficient evidence to establish the applicant's eligibility for a waiver of inadmissibility under section 212(i) of the Act, she is statutorily ineligible for relief. Accordingly, the AAO finds no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant.

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.