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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

[REDACTED]

H5

DATE: Office: SAN BERNARDINO, CALIFORNIA FILE: [REDACTED]  
**FEB 15 2012**  
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 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, San Bernardino, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Nigeria who used the passport of another person to enter the United States under a Visa Waiver Program in 1999. The applicant 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). He is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601).

On appeal, counsel for the applicant asserts on appeal that the Field Office Director's decision was erroneous and failed to discuss the applicant's spouse's access to fertility treatments. *Statement of Counsel*, received September 25, 2009.

The record contains, but is not limited to, the following evidence: medical records pertaining to the applicant's spouse's fertility treatments; statements from the applicant, his spouse and family members of the applicant; copy of a 2008 tax return for the applicant and his spouse; copies of W-2 forms for the applicant's spouse; an employment letter for the applicant's spouse; copy of a joint monthly mortgage statement and Addendum to a residential property Purchase Agreement; copies of past due notices for water bills and home mortgage; copies of utility bills for the applicant and her spouse; copies of the applicant and his spouse's birth certificates; and a copy of the country report on Nigeria, published by the U.S. Department of State, Bureau of Democracy, Labor and Human Rights, 2007.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(6)(C) Misrepresentation, states 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 chapter is inadmissible.

The record indicates that the applicant presented someone else's passport in order to enter the United States in 1999 under the Visa Waiver Program for France. Thus, he entered the United States by materially misrepresenting his identity. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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

- (1) The Attorney General may, in the discretion of the Attorney General, 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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 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. 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-Moralez*, 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 spouse has asserted that she would experience extreme emotional, psychological and financial hardship if she relocated to Nigeria with the applicant. *Statement of the Applicant’s Spouse*, received May 13, 2009. She asserts that she is not familiar with the economy in Nigeria and would not be able to find employment, that she would not be able to obtain fertility treatments, have access to adequate medical facilities or have medical insurance if she relocated to Nigeria.

The record contains the State Department’s Country Report on Nigeria. The report indicates that Nigeria does have a lower quality of life than the United States. The AAO notes that a more recent Travel Warning, issued October 13, 2011, indicates that there is a continued risk of bombings, risks of additional attacks against Western targets and that crime and armed gangs are a problem in Nigeria. As Nigeria is currently experiencing widespread civil strife, the AAO give this factor some consideration when aggregating the impacts on the applicant’s spouse upon relocation.

The record does contain substantial evidence documenting the applicant’s spouse’s fertility treatments. Although the applicant and his spouse have asserted that it would constitute an extreme hardship if she were to relocate because she would not have access to these treatments in Nigeria,

neither the applicant nor counsel provide any legal support for the assertion that this constitutes a hardship factor. The record does not contain any documentation establishing that fertility treatments would be unavailable in Nigeria, nor does the record establish the impact on the spouse in the event that treatment is not available. Although the AAO acknowledges the applicant's desire to have children, the record does not establish that this will result in a significant or uncommon hardship.

Although the applicant's spouse asserts that she has assimilated to the United States and does not have any family or community ties Nigeria, the AAO notes that having to readjust to one's native country after some time abroad is not considered an uncommon hardship factor.

However, when the hardship factors asserted upon relocation are examined in the aggregate, there is sufficient evidence to establish that, due to the widespread strife and violence in Nigeria, the impacts to the applicant's spouse rise above the common impacts experienced by the relatives of inadmissible aliens who relocate abroad. Therefore, the AAO finds that the applicant's spouse would experience extreme hardship were she to relocate to Nigeria.

With regard to hardship upon separation, the applicant's spouse has asserted that she would experience emotional, psychological and financial hardship if the applicant were removed and she remained in the United States. *Statement of the Applicant's Spouse*, received May 13, 2009. She asserts that she would be devastated emotionally if she had to live separated from the applicant, and that she would fear for his safety, fear for his access to adequate medical services for his Sickle Cell Anemia condition and states that she would be unable to meet her financial obligations without the applicant's assistance.

The applicant's spouse also asserts that the applicant has been left an orphan and has no family or community ties in Nigeria, would be unable to receive medical treatment for his Sickle Cell Anemia, that he would fear for his and his spouse's and that he would be unable to find employment in Nigeria. The applicant's spouse has submitted a statement asserting that he had to leave Nigeria in order to obtain proper medical care for Sickle Cell Anemia, which he has had since birth. *Statement of the Applicant*, dated March 23, 2009. The AAO notes, however, that there is no evidence supporting the applicant's assertion that he was unable to receive treatment for his condition, and no evidence that he would be unable to receive treatment for the condition upon his return. As noted above, hardship to an applicant may not be considered except as it may indirectly impact an applicant's qualifying relative.

The record does not support the applicant's spouse's assertions that he would be unable to receive medical treatment, nor that he has no family ties to Nigeria and would be unable to find employment. The record contains letters from the applicant's Aunt in Nigeria attesting to his social status in Nigeria based on the fact that his father was a justice in the country's court system. As the applicant is a native of Nigeria, he is familiar with its language, customs and security concerns and has family and community ties to Nigeria. There is no indication that he would experience any impact to such a degree that it would result in an indirect hardship to his spouse if she remained in the United States.

The applicant's spouse has asserted that she would be devastated without the applicant, and would suffer depression if he was removed and she remained in the United States. While the AAO acknowledges that the applicant's spouse may experience some emotional impact due to the applicant's removal, there is no evidence in the record which indicates that any emotional impact on her is distinct from that which is commonly experienced by the relatives of inadmissible aliens who remain in the United States.

The applicant's spouse asserts that she and the applicant are barely able to maintain their finances even when both she and the applicant are working, and that they have already fallen behind on their bills. She stated that if the applicant were removed she would be unable to meet her financial obligations and would lose her house and have to file for bankruptcy. However, an examination of the record fails to support these assertions. A tax return for 2008 reveals that the applicant and her spouse jointly reported \$85,078 in income, an amount far exceeding the federal poverty guidelines for a family of two. The Form I-864, submitted with the applicant's Form I-130, indicates that the applicant's spouse earned \$29,388 for 2008, which is also above the federal poverty guidelines for a family of one. See Federal Poverty Guidelines, available at <http://www.uscis.gov/files/form/i-864p.pdf>. The record contains an employment letter for the applicant's spouse, but does not indicate what her salary or income is for that particular job. The record also contains several W-2 forms for the applicant's spouse for the year 2008, indicating that she worked at several other places throughout the year. The record contains a joint mortgage statement for the applicant and her spouse, as well as a past due notice on that mortgage. There is no evidence that the property has been entered into foreclosure. The AAO would also note that the applicant's spouse has asserted that she has family and community ties in the United States, but the record fails to establish that her family members would be unable to assist her financially to mitigate the impacts of the applicant's removal. Based on these observations the AAO can determine that the applicant's spouse may experience some financial impact due to the applicant's departure, but it is not able to determine that the degree and severity of that impact would create an uncommon hardship factor.

When the hardship impacts upon separation are considered in the aggregate, it is clear the applicant will experience some hardship due to the applicant's inadmissibility, but these hardships do not rise sufficiently above the common impacts of separation to constitute extreme hardship.

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(s) in this case. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *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.