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

U.S. Citizenship and Immigration Services

[redacted]

H5

DATE: FEB 2 2 2012 OFFICE: ACCRA, GHANA FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), and Application for Permission to Reapply for Admission After Deportation or Removal under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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,

For

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 applicant is a native and citizen of Nigeria who entered the United States pursuant to an F1 visa on May 20, 1987. The applicant was later placed in deportation proceedings and on June 21, 1993, the immigration judge granted the applicant voluntary departure with an alternate order of deportation. The applicant appealed that decision to the Board of Immigration appeals (BIA) and the BIA dismissed the applicant's appeal on November 18, 1998, granting him voluntary departure until December 27, 1998. The applicant remained in the United States until his removal in June 2005. The applicant was found by the Field Office Director to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The applicant was also 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 an immigration benefit by fraud or willful misrepresentation, based upon the finding that this applicant engaged in marriage fraud to gain immediate relative status in the United States. The applicant is the beneficiary of an approved Form I-129F, Petition for Alien Fiancé. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship to the applicant's spouse upon relocation and denied the applications on this basis. The applications were also denied based upon discretion as the applicant is barred, pursuant to the fraudulent marriage prohibition of section 204(c) of the Act, from the approval of an immigrant visa petition filed on his behalf. *See Decision of the Field Office Director*, dated July 31, 2009.

On appeal, the applicant asserts that his wife and family have suffered emotionally and financially since his departure. He further asserts that his family could not relocate to Nigeria because they will leave behind their community in the United States and will be subjected to a lower standard of living, including education and safety.

In support of the waiver application and appeal, the applicant submitted a declaration, a declaration from his spouse, letters of support, certificates concerning training and education, prescriptions for the applicant's spouse, legal documents, family photographs, financial documentation, identity documents, and background information concerning Nigeria. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act, in pertinent part, provides:

(B) ALIENS UNLAWFULLY PRESENT.-

> (i) in general.- Any alien (other than an alien lawfully admitted for permanent residence) who-
>
> . . . .
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> . . . .
>
> (v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

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

> (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:

> (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...

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 qualifying relative in this case is his U.S. citizen spouse. The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as they may affect the applicant's spouse.

In the present case, the record reflects that the applicant is a fifty-one year-old native and citizen of Nigeria who resided in the United States from May 20, 1983, after entering with an F-1 visa, until his removal from the United States in June 2005. The applicant's spouse is a forty-five year-old native and citizen of the United States. The applicant is currently residing in Nigeria and the applicant's spouse is residing in Houston, Texas with their children.

The applicant asserts that his wife's salary does not equal the amount of income that he used to provide for his family. *See Declaration of* The applicant further states that his sister has been financially assisting his family in the United States. *Id.* The applicant's spouse states that their family now depends on public assistance and friends and family assist them in paying their bills. *See Declaration of* In support of these assertions, the applicant submitted a letter from Gulf Coast Community Services Association stating that the applicant's spouse has sought the assistance of several social service agencies. *See Letter from* dated July 1, 2005. It is noted that the record contains financial documentation including taxes, bills, and W-2s for the applicant and his spouse. However, the most recent of these documents are from 2006. It is noted that the applicant's Form I-601 was filed in 2007 and his Form I-290B was filed in 2009. Further, the assertions of the applicant and his spouse indicate that, with the assistance of their family members and social services, his spouse has been able to make payments on their monthly household obligations. There is no indication that she is past due in any of these payments. It is also noted that the courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, it is not enough by itself to justify an extreme hardship determination. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The application asserts that the demeanor of his children has changed since they have been deprived of his presence. *See Declaration of* Specifically, the applicant states that his son has stopped playing football and experiencing symptoms of withdrawal and his daughter is more outspoken. *Id.* The applicant's spouse also contends that since the applicant's departure, she has suffered from stress, headaches, hypertension, and the loss of hair. *See Declaration of* In support of her assertions, the applicant's spouse submitted prescription labels for Lisinopril, Atenolol, and Hydrochlorothiazide. The record does not contain any background information concerning these prescriptions or any letters or reports from medical

professionals detailing the nature of any emotional or physical hardships suffered by the applicant's spouse. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). It is noted that the applicant's children are not qualifying relatives in the context of this application and that any hardships they suffer will only be considered insofar as they affect the applicant's spouse. Further, it is acknowledged that separation from a spouse nearly always creates a level of hardship for both parties, but the record does not indicate that the applicant's spouse's is suffering from hardship so serious that she is unable to support and care for her children. There is insufficient evidence in the record to find that the applicant's spouse will suffer a level of emotional hardship beyond the common results of inadmissibility or removal if the applicant remains in Nigeria.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

The applicant asserts that his family would not be able to relocate to Nigeria because they would leave behind their home, community and friends. *See Declaration of* The applicant further contends that his family would have to face education, public health, and safety issues in Nigeria. *Id.* It is noted that the applicant's spouse is a native and citizen of the United States and there is no indication that she has ever resided in Nigeria. *See Form I-130*, dated October 12, 1995. The record also indicated that the applicant's spouse is employed and owns property in the United States. *See Declaration of* It is further noted that the Department of State has recently issued travel warnings concerning Nigeria:

> The U.S. Department of State warns U.S. citizens of the risks of travel to Nigeria and continues to recommend U.S. citizens to avoid all but essential travel to the Niger Delta states of Akwa Ibom, Bayelsa, Delta, and Rivers; the Southeastern states of Abia, Edo, Imo; the city of Jos in Plateau State, Bauchi and Borno States in the northeast; and the Gulf of Guinea because of the risks of kidnapping, robbery, and other armed attacks in these areas. Violent crime committed by individuals and gangs, as well as by persons wearing police and military uniforms, remains a problem throughout the country.

Travel Warning-Nigeria, U.S. Department of State, dated April 15, 2011. In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, if she were to relocate to Nigeria, rise to the level of extreme hardship.

The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984).

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 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.

Further, even if he had established extreme hardship to a qualifying relative, this applicant, as a matter of discretion, would not merit a grant of this waiver.

Section 204(c) of the Act states:

> [N]o petition shall be approved if (1) the alien has previously . . . sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

8 U.S.C. § 1154(c). The corresponding regulation provides:

> Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or

> conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

8 C.F.R. § 204.2(a)(ii). A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 359 (BIA 1978). USCIS may rely on any relevant evidence in the record, including evidence from prior USCIS proceedings involving the beneficiary. *Id.* However, the adjudicator must come to his or her own, independent conclusion, and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Id.; Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990).

The applicant's prior marriage was found to have been entered into for the purpose of evading the immigration laws of the United States. In light of the 204(c) finding against this applicant, he is barred from approval of any Form I-130 petitions filed on his behalf. *See* 8 U.S.C. § 1154(c). On November 20, 2008, the Board of Immigration Appeals affirmed the District Director's decision finding that the applicant is statutorily ineligible for immediate relative status because of his prior marriage fraud. Even if the applicant had been able to demonstrate extreme hardship to his spouse, his appeal would still be dismissed on discretion, based upon his participation in immigration marriage fraud, which would render him ineligible for approval of a petition for alien relative.

The AAO further notes that the Field Office Director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. *Matter of Martinez-Torres,* 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(9)(B)(v) and 212(i) of the Act, no purpose would be served in granting the applicant's Form I-212.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 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