

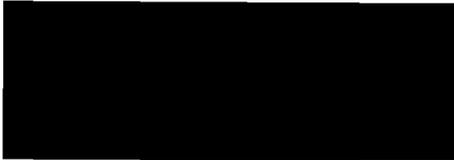
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



Hts

DATE: **FEB 23 2012** OFFICE: ACCRA, GHANA FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Immigration and Nationality Act section 212(i); 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



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,

A handwritten signature in cursive script that reads "Michael Shumway".

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, a native and citizen of Nigeria, was found inadmissible under INA § 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresentation due to his attempted procurement of a visa by willfully misrepresenting a material fact. The applicant is a derivative beneficiary of the diversity lottery and seeks a waiver of inadmissibility pursuant to INA § 212(i), 8 U.S.C. § 1182(i) based on extreme hardship to his spouse who is a U.S. lawful permanent resident.

On October 2, 2009, the Field Office Director concluded that the hardship that the applicant's U.S. lawful permanent resident spouse would suffer as a result of the applicant's inadmissibility did not rise to the level of extreme as required by the statute.

On appeal, counsel for the applicant asserts that the applicant did not make a material representation and that he should not be required to prove extreme hardship to his U.S. lawful permanent resident spouse. Counsel also states that in the event that the applicant must prove extreme hardship, he has done so.

In support of the waiver application, the record includes, but is not limited to, a brief by counsel for the applicant, a letter from the applicant's spouse, biographical information for the applicant and his spouse, and documentation of the applicant's immigration history.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal. The AAO will first address the question of whether the applicant is admissible to the United States.

The Field Office Director determined that the applicant was inadmissible under INA § 212(a)(6)(C), which provides, in pertinent part, that:

- (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.

A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962, AG 1964); *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960, AG 1961). A misrepresentation made in connection with an application for admission to the United States is material either if the alien is excludable on the true facts or if 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 proper determination that he be excluded. *See Matter of S- and B-C-*, *supra*, at 448-449.

The U.S. Department of State determined that the applicant presented false documentation in order to procure a visa to the United States. More specifically, the applicant submitted a fraudulent Western Africa Education Certificate (WAEC) in support of his Diversity Visa application in 1998. As a result, the applicant was found inadmissible under 212(a)(6)(C)(i) of the Act. Although the record before the AAO does not contain a copy of the applicant's student visa application from 1998 or the fraudulent WAEC document, neither has the applicant presented any evidence to indicate that the U.S. Department of State finding was incorrect. The unsupported statements of counsel on appeal are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Counsel for the applicant also states that even were the applicant to have submitted a fraudulent WAEC document, the submission of that document was not material to his eligibility for the diversity visa that he sought. To enter the diversity visa lottery program, however, a person must meet either the education or work experience requirement. The person must have either a high school education or its equivalent, defined as successful completion of a 12-year course of elementary and secondary education; or two years of work experience within the past five years in an occupation requiring at least two years of training or experience to perform. 22 C.F.R. § 42.33(a)(1). In the instant case, the record suggests that the applicant used the fraudulent WAEC records to satisfy the educational requirement of the diversity visa program. As such, the AAO finds that the use of a fraudulent WAEC document would be material to the applicant's eligibility for the visa sought and he would as result be inadmissible under section 212(a)(6)(C) of the Act. We will not disturb the finding of inadmissibility.

Moreover, the AAO notes that the applicant's eligibility for the underlying benefit sought in connection with this appeal was his status as the derivative spouse of a 2009 diversity lottery visa recipient. Issuance of 2009 diversity visas to eligible derivative family members must have occurred during Fiscal Year 2009, i.e., by midnight, September 30, 2009. That date has passed, and the applicant is no longer eligible to obtain a visa in the DV category. '9 FAM 42.33 PN.

Although the applicant appears to no longer be eligible for the immigration benefit underlying his application for a waiver of inadmissibility, the AAO will take note of the evidence on record supporting the applicant's waiver application.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states 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 in this case is the applicant's lawful permanent resident spouse. 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 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).

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.

As the statements of counsel are not entitled to any evidentiary weight, the only evidence in the record to support the claimed extreme hardship to the applicant's qualifying relative is a statement from that relative. The AAO notes that the applicant's spouse became a lawful permanent resident of the United States on June 15, 2009 after having been selected in the 2009 Diversity Lottery. She married the applicant on July 12, 2008 after having already submitted her application for the visa lottery.

We will first consider the hardship claimed by the applicant's spouse if she were to remain in the United States without the applicant. The record establishes that the applicant and his spouse had been married for less than one year at the time of his waiver application and that the applicant's spouse had only recently left her native Nigeria to reside in the United States. The applicant's spouse states that she will suffer emotional hardship if her husband is not able to join her in the United States. In particular, she states that she will not be able to "have a good matrimonial home," celebrate her first-year wedding anniversary with the applicant, and have children together. She also states that she is worried that her husband will not remain faithful to her if they remain separated. The applicant's spouse, however, does not provide any documentary evidence to indicate that her emotional hardship goes beyond the normal hardships associated with separation due to immigration inadmissibility. In regards to financial hardship, the applicant's spouse states that she currently resides with family in a one bedroom apartment. She states that her current living situation is temporary and that she does not know how she will find a job and support herself without her husband. The record, however, does not contain any supporting evidence of the applicant's spouse's current living situation, her financial situation, or her efforts to find employment in the United States. No supporting letters are provided from family members or other members of the community. Additionally, no evidence is provided to illustrate that the applicant's spouse's financial situation would change if the applicant were admitted to the United States. Based on the record, it is not possible to make a determination regarding financial hardship to the applicant's spouse. The AAO recognizes the significance of family separation as a

hardship factor, but concludes that the applicant has not met his burden of proof to document the hardship that his qualifying relative faces if he is not admitted to the United State is extreme.

We must also consider whether the applicant's qualifying relative would suffer extreme hardship should she return to her native Nigeria to reside with the applicant. The applicant's spouse states that she is not able to return to Nigeria because she had serious family problems there, namely that her mother is deceased and her father "dislikes" her. The applicant's spouse did not provide any details, however, regarding why her relationship with her father would cause her hardship if she were to live in Nigeria with the applicant. Moreover, the applicant did not provide any evidence of the economic and social conditions in Nigeria and even if the AAO were to take administrative note of the country conditions, it is the applicant's burden to prove how his qualifying relative would specifically be affected by those conditions. There is no evidence in the record to illustrate that the applicant's spouse would be unable to obtain employment in Nigeria or that she does not have sufficient resources to support herself there. The applicant has not met his burden in demonstrating that his qualifying relative would suffer extreme hardship in the event that she returns to Nigeria to reside with the applicant.

In this case, even were the applicant to be eligible for an immigrant visa, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise 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 qualifying relative 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.