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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: JUL 27 2012 Office: NEW YORK (GARDEN CITY)

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the Act), 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 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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, New York. 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 Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife and children in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated June 16, 2008.

On appeal, counsel contends the applicant established extreme hardship, particularly considering his wife's medical problems and the couple's child's severe asthma.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED] indicating they were married on September 6, 2002; copies of the birth certificates of the couple's four U.S. citizen children; an affidavit and statements from [REDACTED] letters from [REDACTED] physician; a letter from the couple's daughter's physician; a psychoemotional assessment from a counselor; copies of tax returns, bank statements, and other financial documents; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for Nigeria; letters from [REDACTED] employer; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

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.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . . .

In this case, the record shows, and the applicant concedes, that the applicant entered the United States in 1999 using a Nigerian passport and non-immigrant visa in his father's name. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's wife, [REDACTED], states that she and her husband have four U.S. citizen children. She contends that one of the children was born premature and has been to the hospital twice this year. She also contends that her daughter suffers from an extreme case of asthma. [REDACTED] states she has a full-time job which provides the family with health insurance. In addition, [REDACTED] states she suffers from high blood pressure, depression, and severe chest pains. According to [REDACTED] she takes four different prescription medications for her medical conditions. Furthermore, [REDACTED] contends she could not return to Nigeria to be with her husband because there are a lot of abuses against women and children in Nigeria. She also contends she would not be able to obtain health insurance in Nigeria and that when she took two of her children to Nigeria to see her father before he died, both children got malaria.

After a careful review of the record, the AAO finds that if [REDACTED] returned to Nigeria to be with her husband, she would experience extreme hardship. Letters from [REDACTED] physician confirm that she has a difficult time controlling her hypertension, that she had an abnormal EKG, and that she takes three prescription medications daily. A letter from the couple's daughter's physician corroborates [REDACTED] claim that her daughter has asthma. According to the physician, the couple's daughter has suffered a couple of severe asthma attacks and has received Epinephrine injections on many occasions despite being on Singular every night. The physician also states that she is on Nebulizer treatment with Albuterol and Provental, Albuterol Liquid PRN, and uses an inhaler. Under these circumstances, the AAO recognizes that relocating to Nigeria would disrupt the continuity of health care and the procedures their doctors have in place to monitor and treat [REDACTED] and the couple's daughter. In addition, the record contains two letters from [REDACTED] employer stating that she works full time as a Registered Nurse and has been an employee since February 2004. The AAO acknowledges that relocating to Nigeria would entail leaving her employment and all of the benefits of her job. Furthermore, with respect to [REDACTED] fears about returning to Nigeria, the AAO acknowledges that the U.S. Department of State has issued a Travel Warning urging U.S. citizens to avoid all but essential travel to parts of Nigeria, stating that violent crime remains a problem throughout the country and that the risk of continued attacks against Western targets remains high. *U.S. Department of State, Travel Warning, Nigeria*, dated June 21, 2012. Considering all of these factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if she returned to Nigeria to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

Nonetheless, [REDACTED] has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. Although the AAO is sympathetic to the family's circumstances, if [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Although the record contains a psychoemotional assessment from a counselor diagnosing [REDACTED] with Adjustment Disorder with Mixed Anxiety and Depressed Mood, as well as a more recent addendum, the record does not show how the applicant's situation is unique or atypical compared to others in similar circumstances. See *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). In addition, although the record contains documentation showing that [REDACTED] has hypertension that is difficult to control and for which she takes medications, there is no suggestion in the record that she requires any assistance from her husband. Similarly, although the couple's daughter has asthma, aside from contending that she and her husband take turns caring for their daughter, the record does not show that [REDACTED] hardship is extreme, unique, or atypical compared to others in similar circumstances. Furthermore, to the extent the applicant makes a financial hardship claim, the AAO notes that the letters from [REDACTED] employer show she earns more than \$71,000 per year and tax records show that in 2007, the couple received more than \$19,000 in rental income. In addition, [REDACTED] submitted a Form I-864, affirming she would financially support the applicant and listing her individual annual income as \$73,299. The AAO acknowledges that if [REDACTED] remains in the United States without her husband, she will be a single parent to four minor children, one of whom has an ongoing health problem. Nonetheless, even considering all of the evidence in the aggregate, there is insufficient evidence for the AAO to conclude that [REDACTED] would suffer extreme hardship if she decided to remain in the United States without her husband.

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 [REDACTED] the qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. 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.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility 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.