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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

[Redacted]

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Date: **JUN 15 2012** Office: ACCRA, GHANA [Redacted]

IN RE: [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 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 with the field office or service center that originally decided your case by filing a 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,

George Perry

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 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 procure admission to the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a U.S. citizen and the father of a U.S. citizen child. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse and child.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 19, 2010.

On appeal, the applicant's wife claims that she cannot move to Nigeria because it is dangerous and asks that their daughter's need for her father be considered in a favorable exercise of discretion. *Form I-290B, applicant's wife's affidavit*, dated March 15, 2010. She also submits new evidence of hardship.

The record includes, but is not limited to, statements from the applicant's wife, letters of support, a psychosocial assessment of the applicant's wife, school records for the applicant's wife and daughter, photographs, employment documents for the applicant's wife, financial documents, country-conditions documents about Nigeria, and documents from the applicant's expedited-removal proceeding. The entire record was reviewed and considered in arriving at 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.

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

- (1) The [Secretary of Homeland Security, "Secretary"] may, in the discretion of the [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 [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 first 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 or his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 Service (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 of Immigration Appeals (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 the present case, the record indicates that on February 15, 2004, the applicant presented a photo-substituted nonimmigrant visa in an attempt to enter the United States. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not dispute this finding.

The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien'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 section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

In a statement dated August 27, 2009, the applicant's wife states she traveled to Nigeria several times and searched for work there when she became pregnant but was unsuccessful because of "the bad economy." In a psychosocial assessment dated May 11, 2009, licensed social worker [REDACTED] reports that the applicant's wife, who has lived in the United States for nearly ten years, "has worked hard to establish her career" in the United States, and she is "worried about high unemployment and low wages in Nigeria." Additionally, the applicant's wife states her employment as a registered nurse offers retirement and health benefits to her and their daughter. She claims that their daughter has been treated for asthma and a heart murmur, and she worries about their daughter's respiratory condition in Nigeria, where healthcare is "very primitive." Further, the applicant's wife states she does not want their daughter to be raised in Nigeria, "because the education, standard of living and housing are very inferior," and females do not have the same opportunities as males. The AAO notes the significant emotional hardship that the applicant's wife may experience by having to raise their daughter in Nigeria.

In her March 15, 2010, affidavit, the applicant's wife states it is dangerous to live in Nigeria; family members have told her about kidnappings and murders of women and children. Country-conditions evidence in the record supports the applicant's wife's statements. The applicant's wife states that she is afraid that, as U.S. citizens, she and their family are targets for kidnapping. The AAO notes that on February 29, 2012, the Department of State issued a travel warning to U.S. citizens about the security situation in Nigeria. The warning states, "[v]iolent crime committed by individuals and gangs, as well as by persons wearing police and military uniforms, remains a problem throughout the country." Additionally, "[t]he risk of additional attacks against Western targets in Nigeria remains high.... U.S.

citizen visitors and residents have experienced armed muggings, assaults, burglary, carjacking, rape, kidnappings, and extortion - often involving violence.”

Based on the record as a whole, including the applicant’s wife’s safety concerns in Nigeria, having to raise her daughter in Nigeria, her daughter’s medical issues and possible disruption of her treatment, and her employment issues, the AAO finds that the applicant’s wife would suffer extreme hardship if she were to join the applicant in Nigeria.

However, the record fails to establish extreme hardship to the applicant’s wife if she remains in the United States. The applicant’s wife states she is suffering from “severe anxiety and depression,” and [REDACTED] diagnosed her with “reactive depression,” that “would be exacerbated” if the applicant cannot join her in the United States. Additionally, the applicant’s wife states their daughter is behaving “aggressively at school” because of the applicant’s absence. [REDACTED] reports that the applicant’s daughter sometimes “is mean to some of the other children” in her school, “in response to the absence of [the applicant] and to her mother’s depressed state.” The AAO acknowledges that the applicant’s daughter may be suffering some hardship in being separated from the applicant. However, the applicant’s daughter is not a qualifying relative, and the applicant has not shown that hardship to his daughter related to their separation has elevated his wife’s challenges to an extreme level.

The applicant’s wife states she is experiencing “a severe financial burden.” Evidence in the record shows she earns \$65,000 annually. In addition to her living expenses, she helps to support the applicant in Nigeria. The record also shows in August 2007, the applicant’s wife was offered a nursing position with an annual salary of \$70,314.00.

The AAO acknowledges that the applicant’s wife may be suffering some emotional difficulties in being separated from the applicant. While it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished his wife’s emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. Additionally, the record includes some documentation of the applicant’s wife’s income and expenses; however, this material offers insufficient proof that the applicant’s wife is unable to support herself in the applicant’s absence. Further, the applicant has not distinguished his wife’s financial challenges from those commonly experienced when a family member remains in the United States alone. The evidence does not establish that the applicant is unable to obtain employment in Nigeria and, thereby, financially assist his wife from outside the United States. According to the record, the applicant owns a print-advertising business in Nigeria. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

Although the applicant has demonstrated that his wife would experience extreme hardship if she relocated abroad to reside with the applicant, 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.

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. *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.