



U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent disclosure of
invasion of personal privacy
PUBLIC COPY



115

DATE: **JUN 21 2012** Office: ACCRA, GHANA FILE:

IN RE: Applicant

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:



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 Row
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 a 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 having sought an immigration benefit through fraud and willful misrepresentation. 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 and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. He further indicated that he found the applicant to be subject to the fraudulent marriage prohibition pursuant to section 204(c) of the Act, 8 U.S.C. § 1154(c), and that the Form I-130s filed on the applicant's behalf had been approved in error. Accordingly, the Field Office Director denied the Form I-601. Based on his denial of the Form I-601, the Field Office Director denied the Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) as a matter of discretion. *Decision of the Field Office Director*, dated October 30, 2009.

On appeal, counsel for the applicant asserts that the applicant's family would suffer extreme hardship if the applicant is excluded from the United States. Counsel further contends that the applicant's family would be at risk if they relocated to Nigeria. *Form I-290B*, received November 30, 2009.

The record includes, but is not limited to, statements from the applicant, his spouse and his older son; a psychological evaluation of the applicant's spouse by [REDACTED], dated March 8, 2004; a statement of support from [REDACTED] earnings statements for the applicant's spouse; mortgage statements from 2005 and 2007; tax returns and W-2 Wage and Tax Statements from 2004 and 2005; and documentation submitted in support of the applicant's prior immigration filings.

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 reflects that the applicant twice misrepresented his marital status in order to obtain an immigration benefit under the Act. On December 20, 1999, an immigration judge found the applicant to have obtained lawful permanent residence in the United States through fraud or the willful

misrepresentation of a material fact and to be subject to removal under section 237(a)(1)(A) of the Act as an inadmissible alien pursuant to section 212(a)(6)(C)(i) and 212(a)(7)(i)(I) of the Act. The immigration judge reached her decision after determining that the applicant had married his current spouse on January 12, 1984 in Nigeria, and had concealed this marriage in order to obtain lawful permanent resident status based on the Petition for Alien Relative (Form I-130) filed by the U.S. citizen he married on May 9, 1985. In her decision, the immigration judge also noted that the applicant had testified to having misrepresented his marital status in an October 17, 1983 nonimmigrant visa application, claiming to be married in order to increase his chances for approval. Accordingly, the AAO finds the record to establish that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for having obtained an immigration benefit through willful misrepresentation of a material fact.

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).

The Field Office Director also found the record to establish that the applicant had entered into his 1985 marriage solely for the purpose of evading U.S. immigration laws. The Field Office Director concluded, therefore, that the applicant was subject to the marriage fraud provisions of 204(c) of the Act and that the Form I-130s approved on his behalf on May 17, 2006 and December 13, 2007 had been wrongly granted. The AAO finds, however, that the Field Office Director erred in making a 204(c) finding as part of his consideration of the applicant's waiver application.

The Board of Immigration Appeals (BIA) has held that a determination as to whether section 204(c) of the Act applies must be made by a District Director in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 359 (BIA 1978); *Matter of Samsen*, 15 I&N Dec. 28, 29 (BIA 1974). Accordingly, the authority to make a finding of marriage fraud in the applicant's case lies with the United States Citizenship and Immigration Services (USCIS) District Director in Baltimore, who has jurisdiction over the Form I-130s filed on behalf of the applicant by his current spouse and his older son, including the initiation of any revocation proceedings regarding them. A December 13, 2007 memorandum in the record indicates that the Baltimore District office in approving the Form I-130 petition filed by the applicant's spouse considered but did not apply section 204(c) of the Act because the applicant's 1985 marriage was not found to be fraudulent. The AAO notes that to establish marriage fraud, the evidence of fraud in the record must be "substantial and probative." *Matter of Tawfik*, 20 I&N Dec. 166, 169 (BIA 1990).

The AAO finds the December 13, 2007 memorandum to establish that the Baltimore District Director, within whose jurisdiction a 204(c) determination in this case is properly made, has considered the applicant's 1985 marriage and has concluded that 204(c) of the Act does not apply. As the District Director reached this conclusion based on the same evidence considered by the Field Office Director, we find no purpose would be served by remanding this matter for further review. Accordingly, the AAO finds that section 204(c) of the Act may not be applied to the applicant in the present matter and withdraws the Field Office Director's finding to the contrary.

The AAO now turns to a consideration of the extent to which the record demonstrates the applicant's eligibility for a waiver under section 212(i) of the Act.

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

- (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 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 or his children 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-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).

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-I-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, the AAO considers the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

On appeal, counsel for the applicant asserts that the conditions in Nigeria would result in extreme hardship for the applicant's spouse and children. He contends that in Nigeria, the applicant's spouse and children would not be safe and that children in Nigeria are trafficked for sexual exploitation and forced labor. No other claims of hardship upon relocation are found in the record.

The AAO notes that the U.S. Department of State has issued a travel warning for Nigeria, last updated on February 29, 2012, which advises U.S. citizens of the risks of travel to Nigeria, particularly to the Niger Delta, the Southeastern Nigerian states of Abia, Edo, Imo; the city of Jos in Plateau State, Bauchi and Borno States in the northeast; and the Gulf of Guinea. While the travel warning does not indicate that the State of Lagos, where the applicant resides and where his spouse would also be likely to live, is an area that poses particular risks for U.S. citizens, the AAO will, nevertheless, consider conditions in Nigeria as a hardship factor.

However, having reviewed the record, the AAO does not find it to demonstrate that the applicant's spouse and children would experience extreme hardship upon relocation. While the AAO notes conditions in Nigeria, we do not find these conditions, even when considered in the aggregate with the normal hardships created by relocation, to establish that the applicant's spouse and children would suffer extreme hardship if they joined the applicant in the State of Lagos. We also observe that the applicant's children, who are now 27- and 24-years-of-age, are not qualifying relatives in this proceeding and find that the record fails to establish how any hardship they might experience in Nigeria would affect their mother, the only qualifying relative in this proceeding.

In a statement dated July 20, 2009, the applicant's spouse asserts that the applicant's removal has created a lot of hardship for the whole family and that their hardship is worsening. She states that the applicant is the breadwinner of the family and that he pays the mortgage, utility bills, health insurance and other financial obligations, and that, without his earnings and financial management, she is unable to meet her financial obligations. She asserts that she will not be able to pay the mortgage on her home and that after the applicant was removed, she had to wait for an open enrollment period to obtain health care benefits through her employment. She also asserts that she is struggling emotionally, and misses the emotional support and companionship of the applicant.

The record contains two earnings statements for the applicant's spouse from 2009, which establish that her net income is approximately \$3,500 a week or \$168,000 a year. The record does not, however, document the applicant's spouse's financial obligations in 2009, providing only copies of

several of the applicant's and his spouse's mortgage payments from 2005 and 2007. Without documentary evidence of the expenses faced by the applicant's spouse at the time of the appeal, the AAO is unable to determine the financial impact of the applicant's removal.

To demonstrate the emotional hardship created by his removal, the applicant has submitted a psychological evaluation of his spouse and children prepared by psychologist [REDACTED]. [REDACTED] concludes that as a result of the applicant's immigration problems, his spouse is suffering from a Major Depressive Disorder and that both of his children are also experiencing depression, which has had a significant impact on their school work. The evaluation, however, is dated March 8, 2004, more than five years prior to the filing of the appeal, and no more recent mental health report or documentation is found in the record. Therefore, although the input of any mental health professional is respected and valuable, the dated nature of the submitted evaluation limits its evidentiary value to a determination of extreme hardship.

Having reviewed the record in its entirety, the AAO does not find it to support a finding that the applicant's spouse would experience extreme hardship if the applicant is refused admission and she remains in the United States. The AAO recognizes that the applicant's spouse has experienced emotional and financial hardships as a result of her separation from the applicant. However, the record does not establish that even when considered in the aggregate, these hardship factors rise to the level of "extreme" as informed by relevant precedent.

As the applicant has not established that his spouse would experience extreme hardship as a result of his inadmissibility, the applicant has not established eligibility for a waiver under section 212(i) of the Act. 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.

The AAO notes that the Field Office Director also denied the applicant's 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)(i)(II) of the Act, no purpose would be served in considering the applicant's Form I-212.

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.