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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**



PUBLIC COPY

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Date: **MAR 15 2012**

Office: RALEIGH, NC

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of 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 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Raleigh, North Carolina. 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)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, and 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 sections 212(a)(9)(B)(v) and 212(i) of the Act in order to reside with his wife in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the Field Office Director*, dated July 2, 2009.

On appeal, counsel contends the applicant did not intentionally misrepresent a material fact and, therefore, is not inadmissible under section 212(a)(6)(C)(i) of the Act. Counsel further contends that any misrepresentation made on a lease agreement was unintentional, and in any event, the applicant's wife's Form I-130 was approved as they have a bona fide marriage. Furthermore, counsel contends the applicant's wife would experience extreme hardship if the applicant's waiver application were denied due to her chronic bipolar disorder and her total financial dependence on her husband.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED] indicating they were married on August 20, 2004; statements from [REDACTED] letters from the applicant's and [REDACTED] employers; a psychological evaluation; copies of tax returns, bills, bank account statements, and other financial documents; copies of photographs of the applicant and his wife; 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)(9)(B) of the Act provides, in pertinent part:

(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 [now the Secretary of Homeland Security (Secretary)] 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 [Secretary] 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.

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:

(1) The Attorney General [now Secretary of Homeland Security] 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 [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 that the applicant applied for, and was awarded, [REDACTED] development rights for Nigeria” from [REDACTED] which required the applicant to attend a managerial and technical training course in the United States. Documentation in the record indicates that the applicant was asked to attend the course in May 1999, but that because the applicant could not get a visa in time for the course, [REDACTED] requested that the applicant attend the course that was scheduled to begin on July 13, 1999. [REDACTED] asked the applicant to arrive for the course no later than July 11 and to plan on departing no later than July 23. The record also shows that the applicant and [REDACTED] had email communications discussing details regarding a \$10,000 initial fee for these development rights. According to the Form I-94, the applicant entered the United States on July 12, 1999, using a B-1 visitor’s visa, with authorization to remain until August 15, 1999. It is uncontested that the applicant did not attend the course and that he stayed beyond the date of his authorized stay. The applicant departed the United States in 2005 and was paroled back into the United States in August 2005.

The field office director’s decision found that the applicant misrepresented himself by stating that the sole purpose of his visit was to attend a windshield repair course that was vital to his business, and that at the time of the applicant’s entry, he was married to [REDACTED] since

June 23, 1984. According to the field office director, not only did the applicant fail to attend the course, but he overstayed his authorized stay. The field office director further found that in relation to the Form I-130 visa petition filed on the applicant's behalf, the applicant submitted a lease agreement that appeared altered. The field office director noted that the applicant failed to respond to a Request for Evidence and that a copy of the lease provided by the management company of the apartment building verified that the lease the applicant submitted had been altered. The field office director found the applicant inadmissible for misrepresenting a material fact as well as for unlawful presence.

On appeal, counsel contends the applicant came to the United States with the intent to attend the course, but that he failed to attend because he arrived late and had a budget problem. With respect to the apartment lease, counsel contends there was no alteration and contends that additional documentation from the apartment's management supports this claim. In any event, according to counsel, the Form I-130 was approved. Moreover, counsel asserts that the applicant established extreme hardship to the applicant's wife and that the field office director abused his discretion in not considering her mental illness and her total dependence on her husband.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . ."). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO finds that the applicant has not met his burden of proving he is not inadmissible under section 212(a)(6)(C)(i) of the Act. Although counsel's contention that the applicant arrived late and had a budget problem provides a reasonable explanation for the applicant's failure to attend the windshield repair course, there is no corroborating evidence in the record to support this claim. Although the applicant's wife contends that the applicant did not attend the course because of "unforeseen financial constraints that necessitated his change of mind," at the time of the course, she had not yet met the applicant and, therefore, she has no direct knowledge of the circumstances regarding the applicant's failure to attend the course. Because the applicant has not met his burden by providing independent, objective evidence to support his claim, the AAO finds the applicant inadmissible under section 212(a)(6)(C)(i) of the Act.

In addition, the record shows, and counsel does not contest, that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking admission to the United States within ten years of his last departure.

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 has bipolar manic depression and that it is difficult for her to get a job. According to [REDACTED] she dropped out of high school in the tenth grade, is a single mother to three adult children, and had lived with her older sister until she was killed in an automobile accident. [REDACTED] states that since her sister's death, she has been totally dependent on her husband financially as well as emotionally. She contends she has no dependable source of income and that her husband is her sole provider, paying all of their bills. She states that for her entire life, her husband is the only man who has ever cared for her. [REDACTED] claims that her children have their own problems and are unwilling to help her.

After a careful review of the record, the AAO finds that if [REDACTED] decided to stay in the United States without her husband, she would experience extreme hardship. The record contains a psychological evaluation diagnosing her with dysthymic disorder, bipolar disorder, dependent personality features, and a history of a major depressive episode. The psychological evaluation describes how [REDACTED] was raised by her mother, then her grandmother, and then placed in foster care. According to the evaluation, [REDACTED] was abused mentally and neglected as a child, dropped out of school in tenth grade, and became pregnant at the age of fourteen. In addition, the evaluation contends [REDACTED] was admitted to the hospital for suicidal ideation shortly after her sister's death. Therefore, the record corroborates [REDACTED] contentions regarding her mental health and her dependency on her husband for emotional support. Considering [REDACTED] serious and ongoing mental health issues, the AAO finds that the hardship she would experience if she stayed in the United States without her husband is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, [REDACTED] has the option of relocating to Nigeria to be with her husband and the record does not show that she would suffer extreme hardship if she relocated. Significantly, neither the applicant nor his wife discusses the possibility of [REDACTED] moving to Nigeria to avoid the hardship of separation and they do not address whether such a move would represent a hardship to her. In sum, there is no evidence in the record to show that moving to Nigeria would be extreme, unique, or atypical compared to others in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th 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).

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even

where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to 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.