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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  
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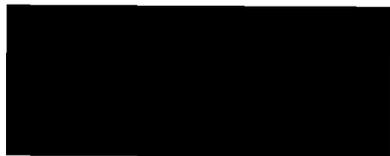
DATE: Office: NEW YORK, NY

FILE:

IN RE: **MAR 30 2012**  
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 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 Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 procuring admission to the United States by fraud or willful misrepresentation of a material fact. The applicant's spouse and child are U.S. citizens. She seeks a waiver of inadmissibility in order to reside in the United States with her family.

The director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Director*, dated October 16, 2009.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship if the applicant's waiver is not approved. *Brief in Support of Appeal*, dated November 18, 2009.

The record includes, but is not limited to, counsel's brief, photographs, statements from the applicant and her spouse, educational records, a psychological evaluation, an employer letter and financial documents. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that on November 9, 1999, the applicant presented a fraudulent British passport to procure admission to the United States. As such, she is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States by willful misrepresentation of a material fact.

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 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 includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her child can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's 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*, 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-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.

The applicant's spouse states that his two brother and two sisters are in Nigeria, but he did not have a lot of contact with them as he was raised by his extended family; he resided in Nigeria until 1991; his and the applicant's main goal is for their daughter and future children to be educated; their daughter will experience educational losses; educational opportunities in Nigeria are poor; and he will lose his insurance plan.

The psychologist who evaluated the applicant's spouse states that the applicant has had two miscarriages; she has been referred to a fertility specialist; this type of medical care is not available in Nigeria; she and her spouse could not afford it even if it was available; children who are away from their safe and familiar environment often derail their educational opportunities; the applicant and her spouse would not be able to support themselves financially; transition to another community will cause sadness, loneliness, anxiety and other mental health issues; the family is involved in their church; Nigeria is a poor country; and the status and safety of women is poor in Nigeria.

The AAO notes that the applicant's spouse was born and raised in Nigeria. The record does not include supporting documentary evidence of the applicant's miscarriages or of the lack fertility services in Nigeria. The record does not include supporting documentary evidence of the country conditions claimed or that the applicant's spouse would experience financial hardship. The applicant's spouse may experience difficulties due to relocation and his daughter's transition to Nigeria. However, the record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that a qualifying relative would suffer extreme hardship upon relocating to Nigeria.

Counsel states that the applicant was a full-time nursing assistant and her income was the household's main source of income; and her daughter and spouse depend on her for support. The applicant's Form G-325 reflects that she was working as a certified nursing assistant from 2004 until 2006 and has been unemployed since then. The applicant's spouse claims that his monthly expenses are \$5,096.54. The record includes a mortgage statement reflecting a past due amount of nearly \$23,000 and a principle balance of about \$95,000. The record includes an employer letter reflecting a weekly salary of \$590 for the applicant's spouse.

The applicant's spouse states that he will have to maintain two homes; he will incur huge bills and debts; he will have to pay for international phone calls; the applicant cares for their child and takes care of the home; the applicant will lose her medical coverage resulting in additional financial burden; and the applicant's departure will likely tear their marriage apart.

The applicant's spouse states that he works in real estate and car auctions; his career will be stagnant without the applicant; he is deeply in love with the applicant; the applicant is an excellent mother; there is a strong likelihood that the applicant will not be able to support herself due to low wages, high unemployment, and the high cost of living in Nigeria; he finds it difficult to sleep; his appetite is poor; he finds it difficult to focus and concentrate; he depends on the applicant for emotional and psychological support; their daughter needs both parents to nurture her; and he is afraid that he may not have a child or the baby would be lost based on her past miscarriages. The applicant states that she and the applicant make monthly mortgage payments and her spouse would be forced to abandon their home.

The psychologist who evaluated the applicant's spouse states that the applicant provides irreplaceable physical, emotional and financial support to her spouse and daughter; the applicant's spouse grew up as an orphan and the applicant provides security; his presentation is consistent with Adjustment Disorder with Mixed Anxiety and Depressed Mood; the applicant's spouse states his life was directionless and the applicant has given him hope and love; the loss of a parent would be emotionally devastating for the applicant's daughter; the applicant's spouse would be unable to care for himself and his daughter; and the cost of flying to Nigeria would be cost prohibitive.

The record does not reflect that the applicant is providing financial support to her spouse or of evidence that she could obtain suitable employment in Nigeria. Other than the mortgage statement, the record does not include documentary evidence of her spouse's expenses. The record reflects that the applicant's spouse would experience some emotional hardship without the applicant. However, the record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that he would suffer extreme hardship upon remaining in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 she 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. *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.