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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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DATE: APR 20 2012

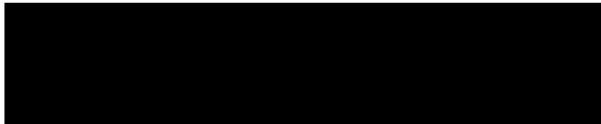
OFFICE: PROVIDENCE

FILE:

IN RE: PAUL A. PHILLIPS

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 Field Office Director, Providence, Rhode Island, 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 entered the United States with a passport in the name of another individual on August 1, 2001. The Field Office Director found the applicant to be inadmissible to the United States under 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 procured entry to the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated July 23, 2009.

On appeal, counsel for the applicant asserts that the applicant's spouse would suffer extreme emotional, psychological, and financial hardship if she were separated from her husband. Counsel further asserts that the applicant's spouse is a native of the United States who has no ties to Nigeria and would suffer extreme hardship in Nigeria due to the country conditions.

In support of the waiver application and appeal, the applicant submitted an affidavit from himself, an affidavit from his spouse, letters of support, family photographs, medical and psychological documentation concerning his spouse, identity documents, and financial documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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:

- (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 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 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...

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 the present case, the record reflects that the applicant is a forty-three year-old native and citizen of Nigeria. The applicant's spouse is a forty-five year-old native and citizen of the United States. The applicant and his spouse are currently residing in Leominster, Massachusetts.

The applicant's qualifying relative in this case is his U.S. citizen spouse. The record contains references to hardship the applicant's child or the applicant would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant or his child as factors 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 or his child will not be separately considered, except as it may affect the applicant's spouse.

The applicant's spouse asserts that she would suffer emotional hardship if separated from her husband because he provides her with stability and companionship. The record contains letter of support stating that the applicant's spouse has no other family, few friends, and since confronted with the possibility of separation from the applicant, has not acted like herself. The applicant submitted a forensic nursing consultation stating that the applicant's spouse has become depressed, irritable, and anxious due to her husband's immigration issues and exhibits symptoms ranging from lower energy to suicidal ideation without the intent to act. The nurse also stated that the applicant's spouse's symptoms are interfering with her personal and professional functioning, and referred the applicant's spouse to a physician for a medication evaluation. There is no indication that the applicant's spouse was evaluated by a physician. Further, nothing in the record indicates that the applicant's spouse's employer has been dissatisfied with her performance. The only submitted letter from the applicant's spouse's employer merely states her position responsibilities and wages. It is acknowledged that separation from a spouse nearly always creates a level of hardship for both parties and the record indicates that the applicant's spouse would suffer emotional hardship if she were separated from the applicant. However, the evidence does not support the assertion that the emotional hardship suffered by the applicant's spouse would be so serious that she would be unable to continue in her employment. There is insufficient evidence in the record to find that the applicant's spouse would suffer a level of hardship beyond the common results of inadmissibility or removal if she were separated from the applicant.

The applicant's spouse states that the applicant's spouse provides her with financial support. Counsel for the applicant asserts that the applicant's spouse would suffer financially if the applicant returned to Nigeria. The applicant's spouse's G-325A indicates that she is employed as a receptionist for a dental group and the applicant's spouse's 2007 tax return, filed separately from

her husband, indicates an income of over thirty two thousand dollars. The record contains insufficient evidence to find that the applicant's spouse would suffer financial hardship beyond the common consequences of inadmissibility or removal if she were separated from the applicant.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

Counsel for the applicant asserts that the applicant's spouse is not familiar with the language and customs of Nigeria and that she would be unsafe, subject to sexual harassment, and face inadequate medical care for her fertility treatments if she relocated. Counsel also asserts that the applicant and his spouse would have difficulty in securing employment in Nigeria. The applicant indicates that his two married sisters reside in Nigeria, but there is no information concerning the extent to which they would be able to facilitate the relocation of the applicant and his spouse.

The applicant contends that he would fear for his spouse's and his child's safety if they relocated to Nigeria, though the AAO notes that the applicant's daughter is not a qualifying relative in the context of this application. The applicant has not indicated where in Nigeria he would reside if he returned, but it is noted that the U.S. Department of State travel warning for Nigeria recommends that U.S. citizens avoid all but essential travel to certain states of Nigeria. The record further indicates that the applicant's wife was born in the United States and has lived here her entire life and has steady employment as well as ties to her community. Further, she is receiving treatment for infertility as well as ongoing dizzy spells. Based on the cultural and linguistic differences for the applicant's spouse and the potential lack of access to adequate medical care for her condition, as well the difficulty of having to adjust to conditions in Nigeria after residing her entire life in the United States, the evidence, in the aggregate, supports a finding that the applicant's spouse would suffer extreme hardship if she relocated to Nigeria.

The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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.

The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits this 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. 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.