

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: **AUG 26 2013**

OFFICE: ROME

IN RE:

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

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Rome, Italy denied the waiver application and 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 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 was also found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children.

The 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 Director*, dated August 10, 2012.¹

On appeal, filed on September 10, 2012 and received by the AAO on March 1, 2013, counsel submits that the applicant has submitted sufficient evidence demonstrating that the applicant's spouse is suffering extreme hardship upon separation from the applicant and would suffer extreme hardship upon relocation to Nigeria.

In support of the waiver application and appeal, the applicant submitted a letter from the applicant's spouse, background information concerning country conditions in Nigeria, identity documents, a letter from the applicant's daughter and school, letters of support, financial documentation, and medical documentation concerning the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act, in pertinent part, provides:

(B) ALIENS UNLAWFULLY PRESENT.-

- (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.

...

¹ It is noted that the applicant also submitted a Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal, which was denied in a separate decision on August 10, 2012. The applicant has not submitted a Form I-290B appeal from that decision denial.

(v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant entered the United States as a visitor on August 12, 1991, with authorization to remain in the United States until February 11, 1992. The applicant remained in the United States beyond that date and was placed into deportation proceedings on July 26, 1996. The applicant was granted voluntary departure until January 27, 1997, which was subsequently extended to July 30, 1997. The applicant did not depart the United States during the voluntary departure period and instead departed on November 23, 2003. The applicant accrued unlawful presence in the United States from July 31, 1997 until her departure on November 23, 2003. Accordingly, the applicant accrued over one year of unlawful presence in the United States, is seeking readmission within 10 years of her last departure, and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her inadmissibility pursuant to this section on 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...

The applicant married a U.S. citizen, [REDACTED] on November 25, 1992. The applicant's husband submitted a Form I-130, Petition for Alien Relative, on the applicant's behalf on May 3, 1993. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, that same date. The applicant submitted a divorce decree in support of her application,

which a forensic document laboratory determined to be fraudulent. The Form I-130 was subsequently denied on January 9, 1995 and the Form I-485 was denied on June 7, 1995.

The applicant asserts that the submission of a fraudulent document in connection with her application for immigration benefits was not her fault. The applicant contends that her former husband, the other party in the divorce decree, sent her an incorrect and undocumented divorce decree. It is noted that the affidavit accompanying the fraudulent divorce decree is addressed to the applicant, stating that the divorce decree was sent to the applicant in response to her request. There is no indication that the fraudulent divorce decree was requested by or received by the applicant's former husband. The applicant has failed to satisfy her burden of proof and demonstrate that she did not procure admission to the United States through fraud or misrepresentation. Section 291 of the Act, 8 U.S.C. § 1361. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

A section 212(i) and 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(6)(C) and 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or other relatives are not considered in section 212(i) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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.

In the present case, the record reflects that the applicant is a 52 year-old native of Nigeria. The applicant’s spouse is a 44 year-old native of Nigeria and citizen of the United States. The applicant is currently residing in Lagos, Nigeria with their two younger children and the applicant’s spouse is residing in [REDACTED] with their oldest child.

Counsel for the applicant asserts that the applicant’s spouse is experiencing financial hardship because he is charged with supporting two households. Counsel further asserts that visiting and keeping in telephone contact with the applicant in Nigeria further strains the applicant’s spouse’s resources. The record contains evidence that the applicant’s spouse has sent money to the applicant in Nigeria. It is noted that the applicant’s spouse is employed as a taxicab driver. It is also noted that the applicant, in her Form DS-230, signed March 17, 2011, states that she is employed in Nigeria, in trading. The record contains evidence of the applicant’s spouse’s household bills in the United States. There is no indication that the applicant’s spouse has been

unable to maintain his financial obligations in the United States since the applicant's departure on November 23, 2003.

Counsel for the applicant asserts that the applicant's spouse needs the applicant in the United States because he is emotionally and physically suffering while caring for his family members in two separate countries. The applicant's spouse asserts that he needs the applicant and their two younger children with him in the United States because life in Nigeria is stressful so that it worries him. The applicant's spouse also asserts that it is also stressful for him to travel to them. The record contains a medical letter stating that the applicant's spouse receives medication for glaucoma and has selective laser trabeculoplasty in his right eye. The letter does not indicate the severity of the applicant's spouse's diagnosis or the extent to which family assistance is needed in treatment. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant's spouse asserts that their oldest child, a daughter, will need the applicant in her life as she prepares for college. The applicant's daughter asserts that she is hurt that the applicant will not watch her graduate and that she needs motherly advice as she transitions to her life in college. It is noted that the applicant's daughter is not a qualifying relative in the context of this application so that any hardship she experiences will be considered only insofar as it affects the applicant's spouse. It is acknowledged that separation from a spouse nearly always creates hardship for both parties and the record establishes that the applicant's spouse is suffering emotional hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse is suffering extreme hardship upon separation from the applicant.

Counsel for the applicant asserts that the applicant's spouse cannot relocate to Nigeria because he would be unable to find comparable work in Nigeria so that there would be no income to support his family. Counsel also asserts that the applicant's spouse needs medical care in the United States and would not receive the same level of care upon relocation. The applicant's spouse contends that he worries about the country conditions in Nigeria.

It is noted that the applicant's spouse is a native of Nigeria who regularly travels to Nigeria to visit the applicant and their two youngest children in Lagos. There is no indication that the applicant's spouse would be unable to seek and procure employment in Nigeria and the applicant indicated on her Form DS-230 that she is employed in trading in Nigeria. The record also indicates that the applicant's spouse's parents and mother-in-law reside in Lagos and there is no information concerning the extent to which they could or would provide assistance to the applicant's spouse upon relocation. Further, as noted, the record is unclear concerning the severity of the applicant's spouse's medical ailment and recommended treatment. The record also does not contain supporting documentation indicating that the applicant's spouse would be unable to receive his glaucoma medication, as necessary, in Nigeria.

The Department of State has issued a travel warning concerning Nigeria, dated December 21, 2012, stating that U.S. citizens are warned of the risk of travel to Nigeria and recommends the avoidance of all but essential travel to specific Nigerian states. There are also restrictions on travel by U.S. officials to northern states. It is noted that the applicant currently resides in Lagos, which is not amongst the designated states or part of the grouping of northern states. There is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer extreme hardship upon relocation to Nigeria.

Although the depth of concern and anxiety over the applicant's family's circumstances 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. 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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse, as required under section 212(i) and 212(a)(9)(B)(v) 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 a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) and 212(a)(9)(B)(v) 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.