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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
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Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



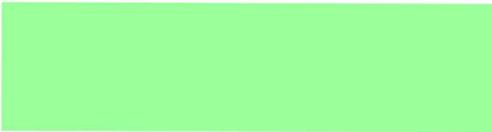
DATE: **DEC 13 2013** OFFICE: ATLANTA, GA

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 (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 waiver application was denied by the Field Office Director, Atlanta, Georgia, and 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 has resided in the United States since October 12, 2005, when she was admitted pursuant to a nonimmigrant visa. She 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 that visa through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse and children.

The Field Office Director concluded that the applicant failed to demonstrate her spouse would experience extreme hardship given her inadmissibility and denied the application accordingly. See *Decision of Field Office Director* dated May 22, 2013.

On appeal, counsel submits a brief in support, a statement from the applicant's spouse, a letter from the spouse's physician, medical records, articles on medical conditions, documentation on country conditions in Nigeria, travel information, letters from friends and family, and educational documents. In the brief, counsel contends the applicant's spouse will experience extreme hardship in the scenarios of relocation and separation in light of medical, religious, and emotional difficulties.

The record includes, but is not limited to, the documents listed above, statements from the applicant and her spouse, letters from family and friends, photographs, additional articles on country conditions, other applications and petitions, and documentation of birth, marriage, divorce, residence, and citizenship. 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 [Secretary] may, in the discretion of the [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 [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 record reflects the applicant claimed she was married when in fact she was divorced in a 2005 non-immigrant visa application. The applicant subsequently admitted on her I-601 application that she “lied about being married in order to procure a visa and entry into the United States, making it appear that [she has] strong family ties” in Nigeria. *See I-601 application*, page 3. As such, the AAO concurs with the Field Office Director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud and/or willful misrepresentation with respect to her 2005 nonimmigrant visa application at the American Embassy. The applicant’s qualifying relative for a waiver of this inadmissibility is her U.S. citizen spouse.

The record contains references to hardship the spouse’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to a spouse’s child as a factor 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 spouse’s children will not be separately considered, except as it may affect the applicant’s spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 contends he will experience medical and emotional hardship without the applicant present. He states that he has diabetes and was diagnosed with prostate cancer some years ago, and that he still has to attend several doctor’s appointments. The spouse indicates that the applicant supports him emotionally when he has those appointments, and that she monitors his food and blood sugar levels. A letter from the spouse’s physician is submitted, as well as a medication list, a diagnosis history, articles on medical conditions, medical records, and photographs. The spouse adds that he had neck surgery in 2010, which resulted in some damage to nerves in his left hand. He asserts that the applicant has helped him move things around the house, and has helped him through his health challenges. Letters from friends and family are submitted, indicating that the applicant assists her spouse with difficulties due to his medical conditions. The spouse also claims that he will worry about the applicant’s safety if she returns to northern Nigeria, because her conversion to Christianity makes her a target for violence as well as unwelcome in her family and home community. Articles on country conditions are submitted in

support. Counsel additionally submits price quotes for flights to Nigeria as evidence of financial hardship.

The spouse moreover claims that he will experience medical as well as family and safety related hardship upon relocation to Nigeria. He indicates that his Christian faith will also make him a target for terrorism and violence in Nigeria. Articles on Christianity in Nigeria are present in the record. Counsel further asserts that the applicant's spouse would not be able to access necessary medical care in Nigeria, and that relocation to the country of his birth would necessarily entail relinquishing his career, his education, and separation from his sons. Documentation on medical care in Nigeria and health insurance are submitted on appeal.

The applicant has submitted sufficient evidence to show that her spouse has had and continues to have some medical difficulties. However, the applicant has not shown what medical conditions her spouse currently has, nor is there an explanation from the spouse's medical services provider on the assistance required to treat those issues. The letter from the spouse's physician is vague and only indicates that the spouse "suffers from multiple medical problems and is a cancer survivor." The diagnosis sheet lacks data in the "start" and "stop" columns, and, therefore, does not indicate what medical problems the applicant's spouse is currently experiencing. Absent an explanation in plain language from the treating physician of the exact nature and severity of any present condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

Furthermore, although documentation on the cost of travel to Nigeria is submitted to reflect financial hardship, the record does not contain sufficient evidence of the spouse's or the applicant's household expenses to support assertions of financial hardship, nor is there any evidence to support an assertion that the applicant's spouse would have to give up on his educational advancement given the applicant's inadmissibility. The applicant further fails to provide any evidence regarding her and her spouse's current employment and earnings. Without details and supporting evidence of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

The record reflects that the applicant's spouse would experience emotional difficulties, including anxiety, upon separation from the applicant. Without more, however, we do not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the medical, financial, emotional, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant returns to Nigeria without her spouse.

The applicant has also submitted insufficient documentation to demonstrate that her spouse would experience extreme hardship upon relocation to Nigeria. The record reflects that relocation would entail separation from the spouse's adult sons, as well as relinquishing his employment and his

community ties. However, assertions that the spouse would be targeted for violence in northern Nigeria as a Christian convert do not address the fact that he may be able to relocate to Lagos, Nigeria, where the applicant resided and was employed for several years. The applicant does not claim she could not return to Lagos, nor is there any evidence demonstrating that she, or her spouse, would face safety-related issues in that city due to their religious beliefs. Furthermore, as there is insufficient evidence on what the spouse's present medical condition is, the AAO cannot determine what, if any, medical difficulties the spouse will experience upon relocation. The record additionally reflects that the applicant's spouse is a native of Nigeria, and that he lived in Nigeria until 1998. As such, the record indicates that the spouse is familiar with the languages and culture of Nigeria.

The AAO notes that relocation to Nigeria would entail separation from family members who live in the United States as well as other difficulties. However, we do not find evidence of record to show that the spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Nigeria.

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) 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 application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.