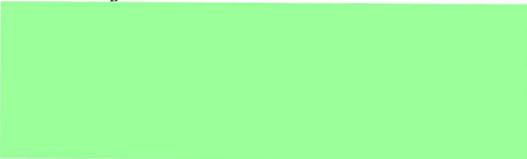




U.S. Citizenship  
and Immigration  
Services

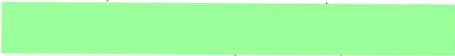
(b)(6)



DATE: FEB 01 2013

Office: ACCRA, GHANA

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 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

(b)(6)

**DISCUSSION:** The waiver application was denied by the Field Office Director, Accra, Ghana, 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 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 attempting to procure admission into the United States through fraud or the willful misrepresentation of a material fact. The applicant is married to a U.S. citizen and is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse and Lawful Permanent Resident children.

In his decision of December 14, 2011, the field office director concluded that the applicant had failed to establish his spouse would experience extreme hardship if he were denied admission into the United States. Accordingly, the Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied.

On appeal, counsel asserts that the field office director erred in finding the denial of the waiver application would not result in extreme hardship. Counsel states that the applicant's spouse and children would experience extreme hardship if they remain in the United States or relocate to Nigeria. Counsel submits additional evidence for consideration.

The record includes, but is not limited to: statements from the applicant and his spouse; birth certificates for the applicant's children; and medical documentation relating to the applicant's spouse. The entire record was reviewed and all relevant evidence considered in reaching this decision.

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.
- .....
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

The record reflects that on November 27, 1999, the applicant attempted to enter the United States with a photo-substituted visa. Accordingly, the AAO finds the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i), for having sought admission to the United States through fraud or the willful misrepresentation of a material fact. The applicant does not contest his inadmissibility.

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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission would result extreme hardship for a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. In the present case, the applicant's only qualifying relative is his U.S. citizen spouse. Hardship to the applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 BIA 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-I-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, the AAO considers the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

On appeal, counsel contends that the applicant's spouse would suffer extreme hardship if she were to relocate to Nigeria to be with the applicant. He asserts that she and her children would receive poor medical care in Nigeria and, further, that the applicant's children would receive a better education in the United States than in Nigeria.

In her statement on appeal, the applicant's spouse asserts that she would suffer extreme and unusual hardship if she were to return to Nigeria. She states that she would suffer a decline in her physical and mental health, lose her employment in the United States, experience a severe decline in her standard of living, be separated from friends, lose her community and professional ties, be socially isolated, and have no guaranteed access to appropriate health care. The applicant's spouse further indicates that she would be unable to worship as she desires, be in physical danger and be constantly terrified as Muslims are killing Christians in Nigeria and there are bombings everywhere. She also maintains that there is no gas or health insurance in Nigeria and that people are losing control because of the poverty in the country.

While the AAO recognizes that the quality of life in Nigeria differs from that in the United States, the record does not include country conditions information to support the applicant's spouse's claims that she would not be able to obtain employment in Nigeria or that her physical and mental health would decline. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. 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)). It also fails to establish that she would be at risk from Islamic extremists if she returned to Nigeria and would not be able to attend church. Although the AAO notes that the U.S. Department of State has issued a travel warning for Nigeria, last updated on December 21, 2012, this warning does not indicate that [REDACTED], where the applicant has lived since 1999, where the applicant's spouse was born and where her father currently resides, is subject to attack from the Boko Haram, which has claimed responsibility for sectarian violence in northern Nigeria, or any other extremist group.

Regarding the hardship claims made on behalf of the applicant's children in Nigeria, the AAO notes that they are not, as previously indicated, qualifying relatives for the purposes of this proceeding and the record does not indicate how any hardships they might experience upon return to Nigeria would affect their mother, the only qualifying relative. Accordingly, in the absence of supporting documentary evidence, the applicant has not met his burden of demonstrating that a return to Nigeria would result in extreme hardship for his spouse.

On appeal, counsel asserts that the applicant's spouse cannot raise her children by herself in the United States. He states that the financial strain on the applicant's spouse who is the only source of income for her children, the family's separation from the applicant, and the applicant's spouse's lack of education is resulting in extreme hardship for the family. Counsel also reports that the applicant's spouse is now sending money to support the applicant in Nigeria as he does not have a job.

In his statement, dated September 15, 2011, the applicant asserts that since his spouse and children departed for the United States in 2006, he has been living alone and that separation has caused a lot of ups and downs in his life. The applicant claims that since his last appointment at the U.S. consulate, he is sometimes sick.

In her statement submitted with the filing of the Form I-601, the applicant's spouse states that she has problems explaining to her children why the applicant is not residing with them, that she has problems sleeping through the night, that she cannot continue her education as she has no one to care for her children, and that she would like to have more children, but is concerned about raising another child by herself.

In her statement submitted on appeal, the applicant's spouse asserts that, occasionally, her minor children have behaved abnormally because they have been bullied by their classmates at school for not having a father. She states that these issues have been causing her stress, and, at times, make her scream. The applicant's spouse also states that she has been diagnosed with Hepatitis B, and is afraid that if she becomes ill again, she could die at home because she might not be able

to get medical attention in time. She also asserts that she has no one to help with picking up her children after school and that she must run from her place of employment to get them, which has made her thin.

The applicant's spouse states that she is currently employed, but that her income of \$29,848.00 is not sufficient to take care of her family. She maintains that she can hardly make ends meet as she has to pay for rent, after school care for her children, cable and transportation. She also indicates that the applicant has lost his job in Nigeria and that she must send him money in order for him to survive.

Although the AAO recognizes that the applicant's spouse has and will experience hardship as a result of her separation from the applicant, we do not find the record to establish that this hardship exceeds that which is normally experienced by the qualifying relatives of inadmissible individuals. While the record contains documentation from [REDACTED] in [REDACTED] New York of the results from a March 19, 2010 Hepatitis B test performed on the applicant's spouse, these results report both positive and negative findings and no medical statement or letter has been provided to explain these results. The record also contains no medical documentation that establishes the impact of a Hepatitis B diagnosis on the applicant's health or what treatment is required. Therefore, the AAO is unable to determine whether the applicant's spouse has been found to have Hepatitis B or that her condition limits her ability to function at home or at work.

The record also fails to demonstrate the financial hardship claimed by the applicant's spouse as it contains no documentation of her (a) income (income tax return or W-2 Wage and Tax Statement), (b) current expenses and financial responsibilities in the United States, or (c) financial support of the applicant. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. Moreover, the record does not include any psychological evaluation or other medical report that documents the emotional impact of separation on the applicant's spouse. Accordingly, the AAO finds that the record does not establish that the applicant's spouse would suffer extreme hardship if his waiver application is denied and she remains in the United States.

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 he merits a waiver as a matter of discretion.

In proceedings for an 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.