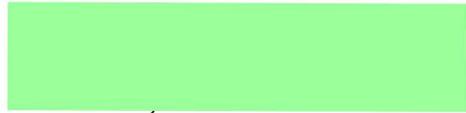




(b)(6)



Date: FEB 05 2013

Office: RALEIGH, NC

FILE: 

IN RE: Applicant: 

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

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Raleigh, North Carolina. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the underlying waiver application will be approved.

The record reflects that the applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, and section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act in order to reside with his wife in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. The AAO dismissed a subsequent appeal, concluding that although the applicant's wife would suffer extreme hardship if she remained in the United States without her husband, neither the applicant nor his wife discussed the possibility of relocating to Nigeria. The AAO dismissed the appeal accordingly.

The applicant filed a motion to reopen and reconsider contending that the applicant's wife, Ms. [REDACTED], would suffer extreme hardship if she relocated to Nigeria to be with her husband. Ms. [REDACTED] submits a new letter with the motion and submits additional evidence addressing country conditions in Nigeria.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the applicant has submitted new documentary evidence to support his waiver application. The applicant's submission meets the requirements of a motion to reopen and reconsider. Accordingly, the motion is granted.

The record contains, *inter alia*: letters from Ms. [REDACTED]; a copy of the U.S. Department of State's Travel Warning for Nigeria and other background materials; letters from the applicant's and Ms. [REDACTED] employers; a psychological evaluation; copies of tax returns, bills, bank account statements, and other financial documents; copies of photographs of the applicant and his wife; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

(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.

....

(v) *Waiver.* - The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 [Secretary] 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.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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) provides:

(1) The Attorney General [now Secretary of Homeland Security] 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien. . . .

The AAO's previous decision found that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to obtain an immigration benefit, and section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year. Counsel does not contest either finding of inadmissibility on motion.

However, since the AAO's March 15, 2012 decision in this case, the Board of Immigration Appeals (BIA) has held that an applicant for adjustment of status who left the United States temporarily pursuant to advance parole under section 212(d)(5)(A) of the Act did not make a departure from the United States within the meaning of section 212(a)(9)(B)(i)(II) of the Act. *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012). In the instant case, the applicant obtained advance parole under section 212(d)(5)(A) of the Act, temporarily left the United States pursuant to that grant of advance parole, and was paroled into the United States. In accordance with the BIA's decision in *Matter of Arrabally*, the applicant did not make a departure from the United States for the purposes of section 212(a)(9)(B)(i)(II) of the Act. Therefore, the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant is inadmissible to the United States only under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to obtain an immigration benefit.

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 this case, the applicant’s wife, Ms. [REDACTED], states that she was born in the United States and has never traveled outside of the United States. She states that relocating to Nigeria would involve a language barrier and that Nigerian English is so hard to understand that she would be unable to understand or speak to anyone there. She also contends that there is no regular supply of electricity or water in Nigeria. In addition, Ms. [REDACTED] contends she does not want to be separated from her children. Furthermore, she states that she has bipolar disorder and that she would be unable to get adequate medical care in Nigeria. She also states she fears being unable to find employment in Nigeria and would fear for her safety as she would be targeted because she is an American. She also states that Nigeria is politically unstable and is in economic crisis.

The AAO previously found that Ms. [REDACTED] would suffer extreme hardship if she remained in the United States without her husband, primarily due to her numerous, serious mental health issues and her dependency on her husband for emotional support. The AAO will not disturb that finding. After a careful review of the entire record, including the additional evidence submitted with the motion, the AAO also finds that if Ms. [REDACTED] relocated to Nigeria to be with her husband, she would experience extreme hardship. As stated above, and as described in the AAO’s prior decision, the record shows that Ms. [REDACTED] has numerous serious mental health problems. Newly submitted evidence with the motion, including a report about the mental health system in Nigeria by the World Health Organization, shows that mental health services in Nigeria are lacking and that there is considerable neglect of mental health issues in the country. Moreover, the AAO acknowledges that Ms. [REDACTED] was born in the United States and has never traveled outside of the United States. Ms. [REDACTED] would need to adjust to living in Nigeria, a difficult situation made more complicated given her mental health problems. Furthermore, the AAO acknowledges that a Travel Warning has been issued for Nigeria. According to the Travel Warning, kidnappings are a security concern throughout the entire country

and crime is a risk throughout the country. *U.S. Department of State, Travel Warning, Nigeria*, dated December 21, 2102. Considering all of these factors cumulatively, the AAO finds that the hardship Ms. [REDACTED] would experience if she relocated to Nigeria to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's misrepresentation of a material fact to procure an immigration benefit, unauthorized presence in the United States, and periods of unlawful employment. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including his U.S. citizen wife; the extreme hardship to the applicant's wife if he were refused admission; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

ORDER: The motion will be granted and the underlying waiver application is approved.