

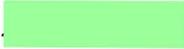


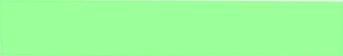
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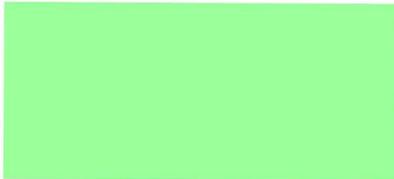
Office: PROVIDENCE, RI

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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.

Thank you

  
for  
Ron Rosenberg  
Acting 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 motion. The motion will be granted and the underlying application will be approved.

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 admission to the United States through fraud or misrepresentation. 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 daughter.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to his qualifying spouse and denied the application accordingly. *See Decision of Field Office Director*, dated July 23, 2009. The AAO also concluded that the applicant had failed to demonstrate extreme hardship to his qualifying spouse and dismissed an appeal of the denial of the waiver application. *See Decision of the AAO* dated April 20, 2012.

On motion, counsel for the applicant asserts that the AAO erred in finding that the applicant did not qualify for a waiver when he had demonstrated extreme hardship to his qualifying spouse upon relocation but not upon separation. Counsel also claims that the AAO failed to give proper weight to the qualifying spouse's hardship related to her infertility, and failed to consider several hardship factors in the aggregate. Furthermore, counsel asserts that the applicant has submitted new material evidence relating to the hardship the qualifying spouse would suffer if she were separated from the applicant. *Counsel's Brief*.

In support of his motion, the applicant submitted a statement from the qualifying spouse; a letter from the mother of the applicant's daughter; and a new psychological evaluation. He previously submitted medical records regarding the qualifying spouse; letters from the qualifying spouse's aunt and friend; and a psychological evaluation. The entire record was reviewed and considered in rendering this decision.

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.

In the present case, the record reflects that the applicant entered the United States on August 1, 2001 with a passport bearing the name of another individual. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. He does not contest this finding of inadmissibility on appeal. He is eligible to apply for a waiver under section 212(i) of the Act as the spouse of a U.S. citizen.

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. Hardship to the applicant himself or to his daughter can only be considered insofar as it causes extreme hardship to his qualifying 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 of Immigration Appeals (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 U.S. 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, 1293 (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 qualifying spouse asserts that she would suffer emotional hardship if the applicant were removed. She states that she and the applicant are very close to the applicant's U.S. citizen daughter, [REDACTED], and that it would be difficult for them to be separated from her. [REDACTED] mother confirms in a letter that the applicant and the qualifying spouse play an important role in [REDACTED] life and that it would be difficult for all three of them to be separated. She fears that a separation would constitute a great loss for [REDACTED] and for the qualifying spouse. [REDACTED] mother also notes that she would not permit [REDACTED] to travel to Nigeria to visit the applicant due to the role of women and girls in Nigerian society. See *Letter from [REDACTED]*, dated May 9, 2012.

Additionally, the qualifying spouse claims that she and the applicant have been trying to have a child since they got married and that their inability to do so has caused them serious emotional and physical hardship. She states that she suffers from anxiety as a result of her inability to become pregnant.

A psychological evaluation in the record indicates that the qualifying spouse depends on the applicant for emotional support and that she has no close friends or contact with family. The

evaluation also notes that the qualifying spouse is very close to her step-daughter, [REDACTED], and that she has been very distressed about her inability to have children of her own. Additionally, the evaluation states that the qualifying spouse is suffering from Major Depressive Disorder with severe sleep disturbance, extreme impairment of concentration and memory, low energy, tearfulness, and weight gain. The qualifying spouse is also experiencing anxiety symptoms, has had suicidal thoughts in the past, and "has a history of developing mental health problems in reaction to stress." See *Psychological Evaluation*, [REDACTED] M.A., M.S.W., LICSW, dated May 15, 2012. The evaluation concludes that separation from the applicant "would have severe and perhaps catastrophic consequences for her mental health," including the possibility that her anxiety could increase and "become crippling." *Id.* She could also have difficulty keeping her job and "could be at high risk for suicide given her level of depression and her complete lack of a support system." *Id.* Finally, the evaluation indicates that separation from the applicant would eliminate the possibility that the qualifying spouse might have children, resulting in extreme emotional hardship for her. *Id.*

The record also contains medical records which indicate that the qualifying spouse has struggled with infertility since 2006. The medical records demonstrate that the qualifying spouse has sought treatment for her infertility, including attending multiple medical evaluations over a period of several months in 2007.

In a decision dated April 20, 2012, the AAO found that the applicant had demonstrated that his qualifying spouse would suffer extreme hardship if she were to relocate to Nigeria. The AAO will not disturb that finding now. Additionally, the AAO finds that the qualifying spouse would suffer extreme hardship upon separation from the applicant.

The record reflects that the qualifying spouse suffers from serious mental health problems which go beyond the type of emotional difficulties which are commonly associated with inadmissibility or removal of a close family member. The new psychological evaluation in the record indicates that the qualifying spouse suffers from depression and anxiety which significantly interfere with her daily life and, if exacerbated, could negatively affect her ability to function. Additionally, the medical documentation in the record confirms that the qualifying spouse has been unable to become pregnant over the past several years despite seeking medical care for infertility. A separation from the applicant would terminate their efforts to have a child and would have negative effects on the qualifying spouse's mental health. In the aggregate, the AAO finds that the qualifying spouse's serious mental health difficulties and her struggle with infertility would create extreme hardship for her if she were separated from the applicant. Therefore, the AAO finds that the applicant has met his burden of demonstrating extreme hardship to his qualifying spouse as required by section 212(i) of the Act.

In that the applicant has established that the bars to his admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the

applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*Matter of Mendez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this case include the extreme hardship the qualifying spouse would suffer if the applicant's waiver application were denied, the fact that the applicant has a young U.S. citizen daughter, and his long residence in the United States. The unfavorable factor is the applicant's use of a fraudulent passport to procure admission into the United States.

Although the applicant's violation of immigration law is serious and cannot be condoned, the positive factors in this case outweigh the negative factor. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the application will be approved.

**ORDER:** The motion is granted and the underlying application is approved.