



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE:

JAN 16 2013

Office: NEWARK, NEW JERSEY

FILE:

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).

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, or a request for a fee waiver. 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Newark, New Jersey, 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 seeking to procure an immigration benefit 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 (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The field office director concluded that the applicant failed to establish that a denial of his waiver application would result in extreme hardship to his U.S. citizen spouse and denied the application accordingly. *See Decision of the Field Office Director* dated April 12, 2012.

On appeal, the applicant, through counsel, claims that his spouse would face extreme hardship due to the applicant's inadmissibility. *See Appeal Brief*. Specifically, counsel cites the political situation in Nigeria and the applicant's spouse's medical condition. *Id.*

The entire record was reviewed *de novo* 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 Attorney General [now Secretary of Homeland Security (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 was found to be inadmissible because he sought to obtain a non-immigrant visa to the United States in 2001 by misrepresenting his marital

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status. The applicant does not dispute this finding. The applicant is therefore inadmissible as charged under section 212(a)(6)C(i) of the Act for having sought an immigration benefit through fraud or misrepresentation.

The Act provides that a waiver of inadmissibility, under section 212(i) of the Act, is dependent first upon a showing that the admissibility bar imposes an extreme hardship on a U.S. citizen or lawful permanent resident spouse or parent. 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). The applicant's case is based on a claim of extreme hardship to his U.S. citizen spouse.

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 (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 (9<sup>th</sup> 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 record in this case contains, in relevant part, the applicant's appeal brief and his application for a waiver of inadmissibility with supporting documents including statements signed by the applicant and his spouse, a letter from [REDACTED] a copy of the U.S. State Department Human Rights Report for Nigeria and a copy of the U.S. State Department Travel Warning regarding Nigeria. On appeal, the applicant, through counsel, maintains that the director failed to properly consider the evidence and the hardship factors. *See Appeal Brief* at 6.

The evidence in the record, considered either individually or in the aggregate, does not demonstrate that the applicant's spouse would face extreme hardship should the applicant's waiver application be denied. The evidence indicates that the applicant married his spouse in 1982 and subsequently resided outside the United States, without his spouse, for 18 years. Nevertheless, the applicant's spouse states that she would face extreme emotional hardship should she be separated from the applicant. *See* Statement of the [REDACTED]. The applicant's spouse also states that she suffers from diabetes and hypertension, and fears not having access to adequate medical treatment should she relocate to Nigeria. *Id.*; *see also* Letter from [REDACTED]. Lastly, the applicant's spouse states that she would not relocate because of the violent political situation in Nigeria. *Id.* The record does not contain any financial information or employment records such that the AAO could determine whether the applicant's spouse faces any potential economic hardship. The record also does not contain evidence of family or community ties either in the United States or Nigeria.

The applicant has failed to meet his burden to establish, by a preponderance of the evidence, that his spouse would experience extreme hardship should his waiver application be denied. As previously noted, the record suggests that the applicant and his spouse have already resided apart. Although the applicant's spouse states that she would suffer emotional hardship, the record contains no evidence to indicate that her emotional concerns are different from those of others in her circumstances. The applicant's spouse's diabetes and hypertension are common medical conditions that are routinely managed with medication. There is no evidence in the record to indicate that the applicant's spouse's condition is more severe or that medical treatment is unavailable or inaccessible. There is also no evidence that the applicant's spouse requires the assistance of the applicant in managing her medical condition. There is also no evidence that the applicant's spouse is financially dependent on the applicant. The AAO finds that the applicant has failed to demonstrate that his spouse would face extreme hardship due to their separation.

Similarly, the evidence in the record does not establish that the applicant's spouse would face extreme hardship should she relocate to Nigeria. The applicant's spouse's concerns in this regard, namely the political situation in Nigeria, are typical among individuals in her circumstances and do not rise to the level of extreme hardship. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. at 886. A "lower standard of living [] and the difficulties of readjustment to [another] culture and environment . . . simply are not sufficient" to establish extreme hardship. *See Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986). The AAO notes the evidence in the record regarding the political and social situation in Nigeria. This generalized evidence, however, does not assist in establishing that the applicant's spouse would face extreme hardship should she relocate to Nigeria. There is no indication that the applicant's spouse would be targeted in Nigeria, or that their situation is any different than any other individuals in their circumstances relocating to Nigeria. The AAO must therefore find that the applicant's spouse would not face extreme hardship due to relocation.

As the applicant has not established extreme hardship to a qualifying relative 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(a)(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.