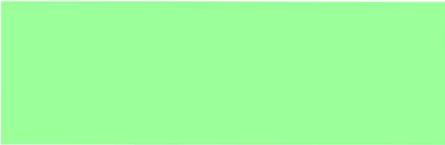


U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



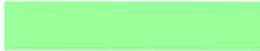
**U.S. Citizenship
and Immigration
Services**

(b)(6)

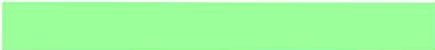


DATE: JUN 20 2013

Office: BOSTON

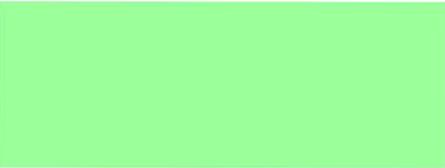


IN RE: Applicant:



APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act (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,

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

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Boston, Massachusetts, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a 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 procuring or attempting to procure an immigration benefit by fraud or misrepresentation. The applicant is seeking a waiver of inadmissibility in order to reside in the United States with his wife and family as the derivative beneficiary of the Petition for Alien Worker (Form I-140) on the basis of which his wife became a lawful permanent resident.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director, July 10, 2012.*

On appeal, counsel for the applicant contends that USCIS erred in misconstruing the extreme hardships that the applicant's wife will suffer as a result of the applicant's inadmissibility, if he is unable to remain in the United States, and in giving the evidence too little weight. In support of the appeal, counsel submits a brief and documentation including: updated statements of the applicant and his wife; medical evidence and a psychological evaluation; a green card; financial information, such as tax returns and mortgage-related statements; supportive statements; and country condition information. The record also includes: prior hardship statements; passports and visas; birth and marriage certificates; employment letters; and documentation pertaining to removal proceedings. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

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)(1) of the Act provides:

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 shows that the applicant used a Nigerian passport bearing his name and a single entry, B1/B2 visa to enter the country on June 29, 1991, but subsequently obtained a fraudulent Liberian passport in order to apply for Temporary Protected Status (TPS) several times during the 1990s. Using fraudulent documents on which the TPS grant was based, he was able to receive TPS

extensions and employment authorization. The applicant also filed an Application to Register Permanent Residence or Adjust Status (Form I-485) as a Liberian citizen and received Advance Parole permitting him to leave the country and reenter in order to pursue the adjustment application. Although he was placed in removal proceedings in 2002, proceedings were terminated. When the employer of the applicant's wife's filed a visa petition on her behalf, the applicant applied to adjust status as her derivative family member, which required him to seek the waiver of inadmissibility waiver that is the subject of the present appeal.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse and lawfully resident mother are each a qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 provided a list of factors it deemed relevant in determining whether an applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); conversely, 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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

For reasons discussed below, the AAO finds that the situations of the applicant’s wife and children, should the applicant be unable to remain here, comprise circumstances which, on aggregate, meet the extreme hardship requirement under the Act.

Regarding whether the applicant has established that a qualifying relative would suffer extreme hardship by relocating to Nigeria, the record reflects that the cumulative effect of problems directly impacting his wife, coupled with hardships she would experience through difficulties to which her children would be subject, represent hardships that rise to the level of “extreme.” The record shows that the applicant and his wife married in November 1992, had four children together from 1994 to 2000, and both work as medical professionals. The record reflects that her relatives in the United States include a U.S. citizen mother and two lawfully resident siblings, while she has three siblings remaining in Nigeria. There is evidence that the qualifying relative and her entire family have ties to their community, and ownership of the family home is in her name. Country condition information supports the claim that due to lack of medical infrastructure in Nigeria she would be unable to continue working as a medical technician, because her position does not exist, while high unemployment would make it difficult to find another job there. Official U.S. government reporting also confirms the qualifying relative’s concerns regarding safety and security risks involved in moving to her homeland, reflects that conditions have worsened since she left in the early 1990s, and establishes that human rights problems persist involving discrimination against women and religious and tribal minorities¹ and trafficking in persons. A psychological evaluation suggests that physical

¹ The applicant’s wife claims the family’s Christian religion and membership in a minority tribe make it vulnerable.

abuse she and her siblings suffered at the hands of their father represents a childhood trauma that would make returning to the country where the abuse occurred especially traumatic.

In addition to personal safety concerns, the applicant's wife contends that her elder son's medical condition will be adversely affected by a move to Nigeria. Medical records showing that this 14-year-old has been monitored for asthma and a congenital heart defect diagnosed when he was four years old establish that, while healthy living and medication have allowed him to maintain good health here, adverse conditions such as pollution, lack of access to care, and poor sanitation would make his prognosis poor in Nigeria. Although his asthma is mild and seasonal, the heart defect involves a hole between ventricles making him susceptible to developing a heart infection while young and congestive heart failure later on. Relocating would not only sever the qualifying relative's established ties to her child's treatment providers and interrupt continuity of care, but deprive her son and his siblings of care comparable to what they currently have available. The evidence shows that two of the remaining three children are minors who would have little choice but to relocate with their mother and the fourth is a 19-year-old attending college nearby.

Based on the totality of the circumstances, the evidence is sufficient to establish that a qualifying relative would experience extreme hardship by moving to Nigeria as a result of safety threats, poor employment prospects, and health care that is below U.S. standards, especially in light of diminished treatment options for their child with a congenital heart defect. Further, although the applicant's wife was born in Nigeria, the record reflects that she has lived in the United States for over 20 years and became a lawful permanent resident in 2008.

Regarding the claim of emotional hardship due to separation from the applicant, the aforementioned psychological evaluation notes that physical abuse the qualifying relative suffered and witnessed would increase the adverse impact of the departure of her husband after over 20 years of marriage. The report notes that, due to the applicant's more flexible work hours, it is he who has been the primary caregiver to the children, and thus developed a close bond with them. *See Psychological Evaluation*, August 14, 2012. Based on interviews with all family members, the psychologist concludes that while the applicant's absence would be especially traumatic to his wife, the adverse impact on his children -- his sons in particular -- would represent another hardship factor for the qualifying relative as well.

Regarding the financial component of separation hardship, there is evidence that, while the applicant has contributed unspecified earnings as a registered nurse to household income, his role in the home allows his wife to maintain a stable job on the professional staff of a hospital. Counsel contends that this distribution of labor is necessary to the economic survival of the household, which has one child in college and the others also planning to continue their education beyond high school. Despite lacking specific information about the applicant's wife's income or financial resources, the record reflects that mortgage expenses consume about 15% of total income. Documented high unemployment in Nigeria shows that, besides removing income and an adult presence from the household, the applicant's departure would likely impose on his wife the burden of supporting a second household overseas.

For all these reasons, the cumulative effect of the physical and emotional, as well as financial, hardships the applicant's wife and children will experience due to his inadmissibility rises to the level of extreme. The AAO concludes based on the evidence provided that, were his wife to remain in the United States without the applicant due to his inadmissibility, she would suffer extreme hardship beyond those problems normally associated with family separation.

The documentation on record, when considered in its totality, reflects the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien 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).

See Matter of Mendez-Morales, 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 matter are the extreme hardships the applicant's wife and children would face if the applicant were to reside in Nigeria, regardless of whether she accompanied the applicant or remained here; the applicant's lack of any criminal record; supportive statements; and passage of over 10 years since the applicant disclosed his true identity and admitted gaining TPS

status through fraud.² The unfavorable factors in this matter are the applicant's pattern of fraud and willful misrepresentations.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the equities involved, including the passage of time since the applicant's violations of immigration law, the AAO finds that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility and for consent to reapply for admission, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden and, accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is granted.

² The applicant purchased false Liberian identity and travel documents initially in order to qualify for TPS and then continued to use these fraudulent documents to avoid detection when he renewed TPS status and filed for other unrelated immigration benefits.