



(b)(6)

[Redacted]

DATE: **MAR 28 2013** OFFICE: CHICAGO, ILLINOIS

FILE: [Redacted]

IN RE: APPLICANT: [Redacted]

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:

[Redacted]

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,

Handwritten signature of Ron Rosenberg in black ink.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a second motion. The motion will be granted, however, the underlying application remains denied.

The applicant is a native and citizen of Nigeria who has resided in the United States since February 22, 1992, when he presented a British passport which did not belong to him to procure admission into the United States. He 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. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. Citizen spouse and children.

The District Director concluded the applicant failed to demonstrate that his qualifying relative would experience extreme hardship given his inadmissibility and denied the application accordingly. *See Decision of District Director* dated February 23, 2007.

The AAO dismissed a subsequent appeal, finding the record did not contain sufficient evidence establishing that the applicant's U.S. Citizen spouse would suffer extreme hardship in the event of relocation to Nigeria or upon separation from the applicant. *See AAO Decision*, September 21, 2009. A motion to reopen was denied on June 13, 2012. *See Motion to Reopen Decision*, June 13, 2012.

On motion, counsel submits a statement from the applicant's spouse, and letters from a licensed clinical social worker, a psychiatrist, and a pastor. In the statement in support of the motion, counsel contends that the applicant's spouse would experience financial and emotional difficulties upon separation from the applicant. Counsel moreover asserts that the spouse would suffer medical, financial, educational, and other hardship upon relocation to Nigeria.

The record includes, but is not limited to, the documents listed above, a psychological evaluation, medical and financial documents, other applications and petitions, documentation of property ownership, evidence of birth, marriage, divorce, and citizenship, statements from the applicant and his spouse, and photographs. The entire record was reviewed 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 [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 reflects that the applicant admitted he purchased a British passport in Nigeria and used that passport to gain admission into the United States on February 22, 1992. Inadmissibility is not contested on motion. The AAO therefore affirms that the applicant is inadmissible under section 212(a)(6)(C) of the Act for having procured admission to the United States through fraud or misrepresentation. The applicant's qualifying relative is his U.S. Citizen spouse.

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. 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 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 (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 applicant’s spouse contends she is compelled by legal, spiritual, and emotional marital bonds to remain together. She additionally states that if they are separated, she will experience severe financial hardship, because she will be unable to care for her three children and meet her financial obligations without the applicant’s income. The spouse contends she has experienced a drop in her income and she is behind on her mortgage and bills. A letter is submitted from the applicant’s mortgage company, indicating his loan payment is more than 30 days past due. The spouse moreover claims that the applicant is essential in taking care of their children, one of whom has been diagnosed with attention deficit hyperactivity disorder (ADHD). A licensed clinical social worker indicates in a letter that the child is currently being treated for intermittent explosive disorder, which leads to outbursts of anger and a loss of control. The social worker adds that the applicant is taking on more responsibility in helping the son manage this disorder by monitoring his behavior and encouraging him to gain better control by psychotherapy and medication. A child psychiatrist indicates that the son was evaluated in June 2012 and will undergo medication management with the psychiatrist. The applicant’s spouse further contends that she needs the applicant to deal with her own psychological issues. A physician states in a letter that the

applicant's spouse developed generalized anxiety disorder in 2008, and that the applicant's emotional support helps keep the disorder under control. The physician additionally indicates that without family support, the spouse may experience a flare up of the disorder, which will result in her inability to do her job, take care of her children, and become a social liability. The spouse contends that the five employees of her and the applicant's business, Hopewell Healthcare, will suffer because they will be forced to shut down the business without the applicant present.

The applicant's spouse also claims that although Nigeria is the country of her birth, she has visited the country less than five times after she moved to the United States at 19 years of age. She indicates her training and certification as a registered nurse in the United States will be useless because it is not recognized in Nigeria. The spouse asserts that she would experience difficulty in Nigeria due to the economic and political conditions, the corruption, violence, and poor educational system. The spouse contends she no longer speaks, writes, or understands Yoruba or any other African language, and would consequently have great difficulty adjusting to life in Nigeria. She adds that relocating to Nigeria would entail separation from her family and her church in the United States, with which she is highly involved.

The record still does not contain current evidence with respect to the applicant's or the spouse's income or household expenses to support assertions on financial hardship. The applicant submitted a letter from his mortgage company, indicating that a loan payment was 30 days overdue, but the letter is from October 2009, and there is no evidence demonstrating that the applicant's spouse has had financial difficulties after that date. Furthermore, the record does not contain any evidence, such as paystubs, current tax returns, and copies of current household bills, to establish that the spouse's financial obligations exceed her income. Without supporting evidence, the AAO cannot conclude that the applicant's spouse would experience financial hardship without the applicant present.

The applicant has submitted sufficient evidence demonstrating that his child has intermittent explosive disorder. However, the record further reflects that the child is undergoing psychotherapy and is taking medication for the condition. There is no indication that the applicant is essential to help manage this condition, only that he helps monitor the child's behavior and encourages treatment. Evidence of record does not establish that the applicant's presence is necessary to control the child's condition, or that his assistance would significantly alleviate a consequent burden on his spouse.

The record reflects that the applicant's spouse experiences anxiety. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to Nigeria without her spouse.

The applicant's spouse contends her credentials as a registered nurse in the United States would not be accepted in Nigeria, that she and her family would face adverse economic and political conditions, she and her children would not have access to necessary medical care there, and that her children would not be able to obtain a good education there. However, the applicant has still failed to submit evidence in support of assertions on relocation to Nigeria. Although the spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Without supporting evidence, the AAO can give limited weight to the spouse's assertions on relocation to Nigeria.

The AAO notes that relocation to Nigeria would entail separation from family members who live in the United States as well as other difficulties. However, we do not find evidence of record to show that the spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Nigeria, the country of her birth.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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 the applicant merits a waiver as a matter of discretion.

In proceedings for a 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, although the motion is granted, the underlying application remains denied.

ORDER: The motion is granted, but the underlying application remains denied.