



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **OCT 01 2013**

Office: BALTIMORE

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). A subsequent motion was granted and the underlying application remained denied. The present motion is granted and the prior AAO decision is affirmed.

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 sought to procure a U.S. passport by falsely claiming to be a U.S. citizen. The applicant does not contest the finding, but rather 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 determined that the applicant was ineligible for a waiver due to his false claim to U.S. citizenship and denied the application accordingly. *See Decision of the District Director* dated May 18, 2007.

On appeal the AAO found that because the applicant's false claim to U.S. citizenship had been made prior to September 30, 1996, the date of enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), he was not inadmissible under section 212(a)(6)(C)(ii) of the Act and is eligible to apply for a waiver under section 212(i) of the Act. The AAO further determined that the applicant had established his qualifying relative spouse would experience extreme hardship if she were to relocate abroad to reside with the applicant. In the same decision, however, the AAO found the applicant had not established that his spouse would experience extreme hardship if she were to remain in the United States while the applicant resided abroad due to his inadmissibility. *See the Decision of the AAO* dated September 2, 2009.

On motion the AAO affirmed its decision, finding that the applicant had failed to establish that his qualifying spouse would suffer extreme hardship as a consequence of being separated from the applicant. *See the Decision of the AAO* dated May 10, 2013.

On the current motion counsel for the applicant asserts that there are new facts regarding the hardship the spouse would experience if she remains in the United States. With the motion counsel submits an affidavit from the applicant's spouse; a psychological evaluation of the applicant's spouse; health insurance information for the applicant and family; country information for Nigeria; two letters from companies in Nigeria stating they are unable to hire the applicant; and articles about the importance of fathers to a family. The record also contains statements from the applicant, his spouse, and his son; medical documentation for the family; financial documentation; and school documentation for a son's counseling. 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 that:

The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 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 Attorney General [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

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. The applicant's spouse is the only 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-Moralez*, 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 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. *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)); 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.

As noted, the AAO determined that the applicant had established his spouse would experience extreme hardship if she were to relocate abroad to reside with the applicant, but that the applicant had failed to establish that his spouse would suffer extreme hardship were she to remain in the United States while the applicant relocated abroad due to his inadmissibility. The AAO found that the evidence was insufficient to show that the applicant’s spouse would suffer hardship any greater than ordinarily associated with removal, the record did not contain documentation substantiating claimed medical conditions of the applicant’s spouse and children, there was nothing in the record to suggest the applicant would be unable to find employment in Nigeria to alleviate any potential financial burden for his spouse, and the record showed the applicant’s spouse has an extensive support network of friends, co-workers, and church members in the United States.

On motion the AAO affirmed the prior decision, finding that the applicant had failed to establish that his qualifying spouse would suffer extreme hardship as a consequence of being separated from the applicant. The AAO found that the record does not establish that the emotional hardships of the applicant’s spouse are outside the ordinary consequences of removal. The AAO found that although the record established the spouse suffers a permanent health condition, documentation showed it is

under control with medication and does not support that the spouse's treatment is dependent on the applicant being physically present in the United States.

The AAO further noted that although the applicant and spouse state that the spouse would suffer financial hardship if the applicant returns to Nigeria, the applicant submitted only a mortgage statement with no additional documentation to establish that without the applicant's physical presence in the United States the applicant's spouse will experience financial hardship. Further, the AAO found it has not been established that, given the applicant's qualifications, he would be unable to support himself while in Nigeria.

On the present motion the applicant's spouse states that the thought of being separated from the applicant is traumatizing and the thought of raising their children without the applicant is tearing her apart. She states that she has depression with feelings of inadequacy, dependency and helplessness. She states that the applicant provides health and life insurance as well as an income of \$58,000, and that they would lose that insurance without the applicant. She states that she married to share companionship and that a father plays an important role in the lives of children that she cannot fulfill. The spouse states that with Nigeria's unemployment rate at 23 percent and minimum wage at \$115 a month she would be forced to send money to Nigeria for the applicant. She further states that it is a hardship to maintain the children in school and pay the fees, and that she has loans and needs the applicant to help pay outstanding debt.

A psychological evaluation submitted on motion notes that the applicant's spouse was referred by her primary care physician to seek mental health treatment for health issues related to depression and anxiety, and that she has been placed on anti-anxiety medication. The evaluation states that the spouse works full time as a registered nurse and has three part time jobs as she reports that she is preparing to be a single parent. The evaluation notes that the spouse is terrified of losing the applicant, which triggers symptoms of depression and anxiety she reports having felt when her two sons died in Nigeria prior to her migrating to the U.S. The evaluation states that the spouse has never been clinically diagnosed with anxiety and depression, but the evaluator believes she has the conditions and that her past mental health struggles with the loss of her two sons will be triggered and worsened with the loss of the applicant. It states that she reports that she is beginning to experience heart palpitations, being scared for no reason, and having chest pains. It states that she is managing without medication or psychotherapy but with the support of family, and suffered a similar breakdown with the loss of her two sons.

The AAO finds that the record fails to establish that the qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. The applicant's spouse states that she is traumatized at the thought of separation from the applicant and suffers depression. The evaluation submitted on motion states that the spouse shows signs of depression, and that the thought of losing the applicant triggers anxiety related to the deaths of her sons. Before the psychological evaluation submitted with the present motion, the record contained no mention of the deaths of her sons, only a one-sentence reference in a 2004 statement, and the applicant's spouse provides no further information about her sons. The psychological report provided on motion does not establish that the hardships the applicant's spouse would experience are beyond the hardships normally

associated when a spouse is found to be inadmissible. The evaluation states that the applicant's spouse was referred by her primary care physician but no updated supporting information has been submitted aside from a 2012 physician letter that duplicated a 2009 letter, and a 2007 psychiatric evaluation.

On motion, the deficiencies found by the AAO with respect to financial hardship have not been addressed. The applicant's spouse notes the applicant's salary and in a previous statement noted her own salary, and the psychological evaluation indicates that the spouse has a full time position plus three part-time jobs. However, other than a 2012 mortgage statement and insurance documentation submitted on motion, no supporting documentation has been submitted to establish the spouse's income and expenses, the debt obligations that she references, or her overall financial situation to support the assertion that without the applicant's physical presence in the United States his spouse will suffer experience financial hardship. Although the spouse's assertions 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. *See 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)).

On motion counsel and the applicant's spouse assert that there is high unemployment in Nigeria where the spouse would likely need to support the applicant. Counsel submits country information for Nigeria and two letters from firms the applicant apparently contacted about employment. The country reports describe generalized conditions and the record does not indicate how they specifically affect the applicant's ability to find gainful employment. Given the applicant's education and apparent qualifications, two letters do not support the assertion that he would be unable to support himself in Nigeria.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

The AAO recognizes that the applicant's U.S. citizen spouse will endure some hardship as a result of long-term separation from the applicant. However, her situation if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation and the scenario of relocation. 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. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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 application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion is granted and the prior AAO decision is affirmed.