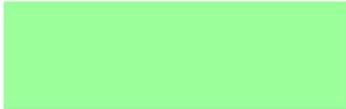


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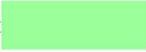
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Office of Administrative Appeals  
20 Massachusetts Ave. NW MS 2090  
Washington, DC 20529-2090



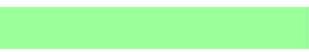
U.S. Citizenship  
and Immigration  
Services



DATE: **OCT 01 2013** OFFICE: RALEIGH-DURHAM, NC

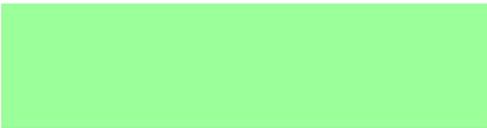
FILE: 

IN RE:

APPLICANT: 

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Raleigh-Durham, North Carolina, and 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 has resided in the United States since 1999, when he presented a passport and visa which did not belong to him to procure admission to 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 child.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated June 5, 2012.

On appeal, submitted by counsel on July 6, 2012, and received by the AAO on May 20, 2013, counsel submits a brief in support. Therein, counsel contends the applicant's spouse would experience medical, financial, and psychological difficulties without the applicant present. Counsel moreover asserts the spouse would suffer from dangerous country conditions if she relocated to Nigeria.

The record includes, but is not limited to, the documents listed above, financial and medical records, statements from the applicant's spouse, family, and friends, documentation of birth, marriage, divorce, residence, and citizenship, other applications and petitions, 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.

In the present case, the applicant admitted that on May 26, 1999, he presented a passport and a nonimmigrant visa which belonged to his father to procure admission into the United States. Inadmissibility is not contested on appeal. 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. 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 claims she will experience psychological, financial, and medical difficulties without the applicant present. The spouse explains she suffers from a debilitating limp in her left leg, due to a fused knee joint and several unsuccessful surgeries in Nigeria. Letters from medical services providers in Nigeria and the United States are submitted in support. The spouse states that she has been recommended for total knee replacement, which she cannot do without the applicant present to take care of her and their son during the long recovery period. She adds that, after a long day at work as a registered nurse, the applicant helps alleviate her pain by massaging her legs, looking after their son, cooking dinner, and taking care of household chores. The spouse contends the pain is caused by increased stress on her hip and knee joints, particularly because her body has had to compensate for the deformity in her knee and the subsequent limp in her left leg. She adds that without his support, physically and emotionally, she would experience significant emotional difficulties. The spouse explains she was depressed when she met the applicant because she had been recently divorced, and she relied on medication to regulate her moods. She states that the applicant lifted her out of her depression, supported her in reaching her career-related goals, and has been a good husband and father. She claims without the applicant’s emotional support, she would fall back into depression, which would affect her employment as a registered nurse, and consequently, her income. The spouse additionally contends she would be unable to run the business she owns with the applicant, where they provide room and board for up to six mentally challenged adults. She explains they cannot afford additional employees yet, and that the applicant takes care of property maintenance and the daily running and upkeep of the facility. A business license and articles of incorporation are submitted in support.

The spouse additionally asserts although she was born in Nigeria, she cannot relocate due to medical, educational, financial, and safety-related reasons. She contends Nigeria does not have sufficient medical facilities to treat her knee problems, and in fact, the multiple surgeries she had in that country have worsened her condition. Letters from medical service providers in Nigeria are submitted. She adds that their child would be unable to access adequate schools in Nigeria, unlike the schools he could attend in the United States. Lastly, the spouse claims the applicant's birthplace in [REDACTED] is very dangerous, and that she would be targeted for violence as a U.S. citizen.

The applicant has demonstrated his spouse would experience safety-related and medical concerns in Nigeria. The record contains several letters from physicians in Nigeria which were written as early as 1983, indicating the spouse requires surgery which is not available in Nigeria. Moreover, it appears from these letters that the medical care the spouse received in Nigeria on her knee condition was inadequate to allow her to walk without pain and limping. The U.S. Department of State's country specific information report generally corroborates these assertions on medical care in Nigeria. Therein, the U.S. Department of State notes, "Nigeria has a number of well-trained doctors, yet medical facilities in Nigeria are in poor condition, with inadequately trained nursing staff. Diagnostic and treatment equipment is often poorly maintained, and many medicines are unavailable." *Country specific information: Nigeria, U.S. Department of State, March 22, 2013.*

Furthermore, the spouse's assertions on safety concerns in [REDACTED] where the applicant was born, are substantiated by the U.S. Department of State's current travel warning. Therein, the U.S. Department of State indicates that due to the risk of kidnappings, robberies, and other armed attacks, all but essential travel to that state is not recommended. *Travel warning: Nigeria, U.S. Department of State, June 3, 2013.*

In light of the evidence of record, the AAO finds the applicant has established that his spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the medical or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Nigeria.

The applicant has not demonstrated that his spouse would experience extreme hardship upon separation. The record reflects that the applicant works 48 hours per week as a registered nurse, and that after work she spends time raising her and the applicant's child. Evidence of record demonstrates that the spouse will have difficulty with her daily responsibilities in light of her documented knee problems, and that recovery after total knee replacement surgery may require the applicant's protracted assistance.

Assertions on the hardship the spouse will experience because of their business, however, are not sufficiently supported by evidence of record. The applicant has submitted documentation showing that [REDACTED] is a home care services business incorporated and licensed to do business in North Carolina. There is no documentation, however, about the facility or the work

either spouse puts into the business. The applicant has not submitted evidence on business income, hours worked, detailed descriptions of responsibilities, or any specific needs of the adults in their care. Although these 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 details and supporting documentation on the spouse’s responsibilities related to her business, the AAO cannot determine what, if any, hardship she will experience on this matter without the applicant present.

As stated above, the record does not contain a clear indication of what, if any, income the applicant and her spouse make from their business. Furthermore, although the spouse contends she has several business loans, the applicant has failed to submit copies of any loan statements or repayment terms. The record also does not support assertions that, without the applicant present in the United States, the spouse would be unable to meet her financial obligations, as evidence of record does not indicate the spouse’s expenses exceed her income. Given the evidence of record, the AAO cannot conclude that the spouse would experience financial hardship without the applicant present.

The applicant has similarly failed to submit sufficient evidence to support assertions that his spouse’s psychological difficulties upon his departure will negatively impact her employment. The applicant has claimed that the psychological trauma of separation will affect her productivity and her ability to care for others, and that she has taken antidepressants in the past. Despite these claims, there is no evidence, such as letters from the spouse’s medical or mental health care providers, to corroborate these assertions.

The record reflects that the spouse will experience emotional hardship upon separation, family-related hardship due to raising a child alone, and some medical related hardship. 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, 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 his spouse.

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.

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 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 appeal is dismissed.