



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: SEP 27 2013

Office: ACCRA, GHANA

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 (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 Field Office Director, Accra, Ghana. The decision was appealed to the Administrative Appeals Office (AAO) and the appeal was dismissed. The applicant filed a motion to reopen and reconsider the AAO decision, which was denied. The applicant now files a second motion to reopen and reconsider. The motion will be granted and the previous decision of the AAO will be affirmed.

The applicant is a native and a citizen of Nigeria who was found to be inadmissible to the United States pursuant to 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 an immigration benefit through fraud and willful misrepresentation. He is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

In a decision, dated October 30, 2009, the field office director found that the applicant was subject to the marriage fraud provisions of 204(c) of the Act and that the Petitions for Alien Relative (Form I-130) approved on his behalf on May 17, 2006 and December 13, 2007 had been wrongly granted. The field office director also concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. In a decision, dated June 21, 2012, the AAO found that the field office director had erred in making a 204(c) finding as part of his consideration of the applicant's waiver application, but that the applicant had failed to establish that a qualifying relative would experience extreme hardship and denied the appeal.

In a motion to reopen and reconsider, dated July 19, 2012, counsel asserted that the AAO should have considered evidence of hardship to the applicant's son, that the AAO abused its discretion when it determined the record did not establish extreme hardship and that it should have considered a second psychological evaluation contained in the record.

On April 19, 2013, the AAO denied the applicant's motion, finding that he had not submitted any additional documentation, nor had he clearly articulated any incorrect application of the statute in question or cited to any statutes or precedent cases to support counsel's assertion that the AAO incorrectly applied any law.

In the current motion, dated May 13, 2013, counsel submits additional documentation of hardship to the applicant's U.S. citizen spouse. The evidence submitted on motion includes: a 2012 W-2 Form for the applicant's spouse, medical documentation, two psychological evaluations, country conditions information for Nigeria, and numerous financial statements.

The record of hardship previously included: statements from the applicant, his spouse and his older son; a psychological evaluation of the applicant's spouse by [REDACTED] dated March 8, 2004; a statement of support from the Chairman, Department of Emergency Medicine, [REDACTED] [REDACTED] 2009 earnings statements for the applicant's spouse; mortgage statements

from 2005 and 2007; tax returns and W-2 Wage and Tax Statements from 2004 and 2005; and documentation submitted in support of the applicant's prior immigration filings.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) In general. 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 chapter is inadmissible.

We had previously found that the applicant misrepresented his marital status on two occasions and as a result was inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for having obtained an immigration benefit through willful misrepresentation of a material fact. The applicant does not contest his inadmissibility on motion.

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

- (1) 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 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-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 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.*

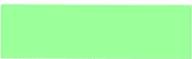
The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a 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. 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.

On appeal, we found that the record did not establish that the applicant's spouse would suffer extreme hardship as a result of relocation to Lagos, Nigeria, where the applicant resides. We also found that the applicant's spouse had failed to establish that she was suffering extreme hardship as a result of separation. We noted that the record did not provide a complete picture of the applicant's spouse's household income and financial obligations. We also found that because the psychological evaluation diagnosing the applicant's spouse with Major Depressive Disorder was done five years before the appeal was filed it was of less evidentiary value in determining her current emotional hardship.

On motion, we now find that the record establishes the applicant's spouse will suffer extreme hardship as a result of relocation, but does not establish that the applicant's spouse will suffer extreme hardship as a result of separation.

In regards to relocation, the record and the current U.S. Department of State Travel Warning, dated June 3, 2013, indicate that travelers to and residents of Nigeria experience violent crime and political corruption. The travel warning states that violent crime and kidnappings are a serious problem throughout the country, including Lagos. The warning specifically states that even wealthier parts of Lagos and guarded compounds have been targeted by violent criminals and that police are slow to respond, if they respond at all. Thus, we find that the applicant's spouse's concerns regarding relocation to Lagos, Nigeria are well-founded and that taking into consideration these country conditions as well as her lack of family ties in Nigeria, long residence in the United States, and significant family and financial ties to the United States, she would suffer extreme hardship as a result of relocation.

In regards to separation, the applicant's spouse asserts that she is suffering emotionally and financially. The record indicates that in 2009 and 2013 she was psychologically evaluated and diagnosed with Major Depressive Disorder. However, these evaluations do not establish that her emotional hardship rises to the level of extreme. The applicant's spouse has related her symptoms as having anxiety, tiredness, poor concentration, a lack of appetite, and stress. The evaluations do not indicate that these symptoms are so severe that she cannot function probably in her career or other daily tasks. The record does not show that this emotional hardship rises to the level of extreme. Similarly, the record includes a medical note stating that as a result of cysts in her leg, the applicant's spouse now suffers from chronic leg pain, but this medical note fails to indicate how this medical condition is affecting her everyday functioning. Furthermore, the record fails to show that the applicant is experiencing financial hardship. The record includes numerous bank statements and a W-2 Wage statement showing the applicant's spouse paid herself \$10,000 in salary from her private practice medical clinic in 2012. We recognize that the applicant's spouse is claiming increased stress level as a result of her chronic leg pain, delinquent renters, and lack of financial resources, but the record fails to support these statements. The bank statements indicate that the applicant's spouse is able to pay her expenses and no documentation was submitted to substantiate the claims made regarding the rental property owned by the applicant and his spouse. Therefore, we find that the applicant's spouse has not shown that she will suffer extreme hardship as a result of separation.



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 in 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.

In proceedings for application for 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, the motion is granted and the previous decision of the AAO is affirmed.

**ORDER:** The motion is granted and the previous decision of the AAO is affirmed.