



(b)(6)

Date: FEB 12 2014

Office: CHICAGO

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.

Thank you,

*for* 

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal is sustained.

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 procured a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. Specifically, the field office director found that the applicant had obtained, and subsequently utilized, an altered nonimmigrant visa to attempt to enter the United States in 2001. The applicant is applying for a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse and child, born in 2010.

The Field Office Director concluded that the applicant had failed to establish that a bar to his admission to the United States would result in extreme hardship to a qualifying relative. The field office director further stated that even if the applicant was able to establish extreme hardship to a qualifying relative, USCIS would decline to exercise favorable discretion. The Form I-601, Application for Waiver of Ground of Inadmissibility, was denied accordingly. *See Decision of the Field Office Director*, dated April 9, 2012.

In support of the appeal, submitted in May 2012 and received by the AAO in September 2013, counsel for the applicant submits the following: a brief, affidavits from the applicant and his spouse, medical and mental health documentation, letters in support, and biographical documents pertaining to the applicant and his child. 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 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 immigrant 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....

On appeal, counsel asserts that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act because his misrepresentation was not willful. He asserts that the applicant was not aware that the nonimmigrant visa he obtained in 2001 was false. *See Brief in Support of Appeal.*

The record indicates that in December 2001, the applicant provided a sworn statement. In the statement, he maintained that he had obtained his nonimmigrant visa from the embassy and that it had been obtained legally. *See Record of Sworn Statement in Proceedings*, dated December 16, 2001. However, in the applicant's affidavit provided on appeal, he admits that he obtained the visa through a woman who he was told worked for the Nigerian State Security Service. He states that he paid her approximately \$7000 and he never in fact went into the embassy himself. He explains that he waited outside while the woman entered the Embassy and later returned the passport to him with the nonimmigrant visa. [REDACTED] dated June 5, 2012.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The applicant has provided contradictory statements regarding his obtainment of a U.S. nonimmigrant visa, including his most recent statements that he never visited the U.S. Consulate in Lagos, but paid an individual to obtain a nonimmigrant visa for him. The applicant has not established that his use of a fraudulent visa to seek admission to the United States was not willful. The AAO concurs with the field office director that the applicant is inadmissible under section 212(a)(6)(C) of the Act.<sup>1</sup>

---

<sup>1</sup> The field office director references numerous other instances that the applicant misrepresented himself pursuant to section 212(a)(6)(C)(i) of the Act. Nevertheless, as the AAO has already determined that the applicant is subject to

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 U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or their child can be considered only insofar as it results in hardship to a qualifying relative. 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

---

section 212(a)(6)(C)(i) of the Act and requires a waiver of inadmissibility under section 212(i) of the Act, as outlined in detail above, it is not necessary to evaluate whether the incidents referenced by the field office director also amount to misrepresentation under section 212(a)(6)(C)(i) of the Act.

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, 1293 (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 U.S. citizen spouse contends that she will suffer hardship were she to relocate to Nigeria to reside with the applicant due to his inadmissibility. To begin, the applicant’s spouse states that she suffers from numerous medical conditions, and due to costly and substandard medical care in Nigeria, she would experience hardship. The applicant’s spouse further details that were she to relocate to Nigeria she would slip down into poverty and she would have no safety or security. [REDACTED], dated June 4, 2012.

In support, documentation has been provided establishing the applicant’s spouse’s numerous medical conditions, including Type II Diabetes Mellitus, Hypertension and Chronic Iritis, and their continued treatment. [REDACTED] dated January 26, 2012 and *Exam Report and Chart Notes from 2007-2012*. In addition, counsel has provided numerous articles regarding the problematic country conditions in Nigeria. The U.S. Department of State has issued a Travel Warning for U.S. citizens outlining the risks of travel to Nigeria. *See Travel Warning-Nigeria*, dated January 8, 2014. Further, the U.S. Department of State confirms that medical facilities in Nigeria are in poor condition, diagnostic and treatment equipment is often poorly maintained and many medicines are unavailable. *See Country Information-Nigeria, U.S. Department of State*, dated February 3, 2014. Moreover, the record establishes that the applicant’s spouse was born and raised in the United States and has extensive ties to her country, including the presence of family, friends, long-term gainful employment and her church. It has thus been established that the applicant’s U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

With respect to remaining in the United States while the applicant relocates abroad due to his inadmissibility, the applicant’s spouse explains that she needs her husband to reside in the United States, as long-term separation from him will cause her emotional and financial hardship. To begin,

the applicant's spouse explains that the applicant loves and supports her and he has helped her have her first sense of normalcy. She further explains that the applicant plays a critical role in their child's upbringing. She notes that she works two jobs and needs her husband's daily presence to help care for their child when she works at night. She contends that without his presence and his own employment, she would not be able to make ends meet. Moreover, the applicant's spouse states that she struggles with numerous medical conditions and she needs her husband to help take care of her and her son when she is unable to do so. Additionally, the applicant's spouse explains that her son will experience hardship if he is separated from his father, and such a predicament will cause her hardship. Finally, the applicant's spouse details that her extended family is unable to help her with the care of her child as a result of their own familial responsibilities, distance from her and/or physical limitations. *Supra* at 4-6.

To begin, evidence has been provided establishing that the applicant's spouse suffers from numerous medical conditions that can be debilitating if not well controlled and treated properly. In addition, documentation has been provided establishing that both the applicant and his spouse are employed and the applicant's spouse works two full-time jobs, one during the day and one in the evening. Documentation has also been provided establishing that the applicant's spouse is experiencing anxiety and depression as a result of the possibility her husband may have to relocate to Nigeria. Numerous letters of support have been provided from friends and family noting the hardships the applicant's spouse will experience were her husband to relocate abroad. Finally, as noted above, the U.S. Department of State had issued a travel warning advising U.S. citizens of the risks of travel to Nigeria. *Supra* at 1.

Due to the applicant's inadmissibility, the applicant's U.S. citizen spouse would have to assume the role of primary caregiver and provider to one child, and the record establishes that such an arrangement would cause her emotional and financial hardship. The applicant's spouse has established that she needs her husband on a day to day basis to help with the care of their child and to provide daily physical and emotional support. A prolonged separation at this time would cause hardship beyond that normally expected of one facing the removal of a spouse.

A review of the documentation in the record, when considered in its totality, reflects that 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 he 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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance 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 hardship the applicant's U.S. citizen spouse and child would face if the applicant were to relocate to Nigeria, regardless of whether they accompanied the applicant or remained in the United States; long-term gainful employment in the United States; the apparent lack of a criminal record; numerous support letters on behalf of the applicant; the payment of taxes; and the applicant's community ties. The unfavorable factors in this matter are the applicant's fraud or willful misrepresentation, unlawful presence and unauthorized employment in the United States, the placement of the applicant in removal proceedings and the applicant's failure to depart pursuant to a removal order.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factor. Therefore, a favorable exercise of the Secretary's discretion is warranted.

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 been met.

**ORDER:** The appeal is sustained.