



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **OCT 01 2014**

Office: NEWARK

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 (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,

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Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of Nigeria, 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 procuring admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative if he was separated from her, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, April 13, 2013.

On appeal, filed on April 26, 2013, and received by the AAO on May 12, 2014, counsel contends that the decision of the Field Office Director was against the weight of the evidence and was a misapplication of the law, that the applicant satisfied the requirements for a waiver, and that the applicant's qualifying relative will suffer extreme hardship if she remains in the United States without the applicant. In addition, counsel submitted additional evidence of hardship to the applicant's spouse.

The record includes, but is not limited to, the following documentation: briefs filed by counsel in support of Form I-601 and Form I-290B, Notice of Appeal or Motion; medical documentation for the applicant's spouse; psychological reports for the applicant's spouse; financial documentation; and country conditions information on Nigeria. 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.

The record indicates that the applicant applied for nonimmigrant visitor visas at the U.S. Consulate in Abuja, Nigeria in November 2009 and August 2010. On November 6, 2009, the applicant was issued a limited issue nonimmigrant visa valid for two weeks maximum; however, the applicant stated that the passport containing his initial nonimmigrant visa was stolen, so he reapplied in August 2010. On August 3, 2010, the applicant was issued with a second nonimmigrant visa. The record indicates that during the applicant's interviews at the U.S. Consulate, he stated that he was a car dealer in Nigeria, and that he was going to visit his brother, a car dealer in New Jersey, to purchase cars to sell in Nigeria. The record further indicates that applicant told the U.S. Consular

official that he was married with children and that his wife and children would remain in Nigeria, when in fact he had no children.

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.

To establish eligibility for a non-immigrant B1/B2 visa, section 101(a)(15) of the Act states, in pertinent part:

(B) an alien...having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

The Foreign Affairs Manual, at 9 FAM 41.31 N3.4, further provides:

The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.

The applicant represented to the consular officer that he had meaningful business connections in Nigeria selling cars and intended to return to Nigeria after a brief visit to the United States to purchase cars. By claiming he had children in his application for a nonimmigrant visa, the applicant represented that he had close family ties in Nigeria. By omitting the fact that he did not have any children, he cut off a line of inquiry which was relevant to the applicant's request for a nonimmigrant visa. As such, we concur with the field office director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation with respect to his nonimmigrant visa application in 2010. The applicant does not contest his inadmissibility.

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), 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. The applicant's U.S. citizen wife 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. *See Salcido-Salcido v. I.N.S.*, 138 F.3d 1292, 1293 (9th Cir. 1993), (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 Field Office Director determined that the applicant established that his qualifying relative would experience extreme hardship if she were to relocate to Nigeria to be with the applicant. The applicant’s spouse was born in the United States and has strong family ties in the United States, including two children from a previous relationship. She is unfamiliar with the culture and customs of Nigeria. Counsel notes that the applicant’s spouse suffers from asthma and has high blood pressure, adding that the medical system in Nigeria is adequate and the drugs she needs to treat her condition are not readily available. Counsel further states that the applicant’s spouse would have difficulty finding employment in Nigeria.

Furthermore, the Field Office Director noted that the U.S. Department of State issued a travel warning for Nigeria on December 21, 2012. On August 8, 2014, the U.S. Department of State updated the travel warning for Nigeria, strongly urging U.S. citizens who travel to Nigeria to keep personal safety and health in the forefront of their planning and noting that kidnappings remain a security concern and violent crimes occur throughout the country. *See Travel Warning-Nigeria, U.S. Department of State*, dated August 8, 2014.

Based on the evidence in the record, the applicant has established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Nigeria to reside with the applicant.

With respect to the hardship that the applicant's spouse would experience if she were separated from the applicant, counsel contends that the applicant's spouse will suffer psychological hardship if the waiver application is not approved. The record includes an affidavit from psychologist, dated April 17, 2013, which describes past hardships suffered by the spouse because her parents and her first spouse were drug addicts and indicates that the applicant's spouse has generalized anxiety disorder with depressive features. The record also includes a letter from another psychologist, dated April 18, 2013, which states that the applicant's spouse was diagnosed with generalized anxiety disorder with depressed mood. While both psychological documents indicate that the applicant's spouse suffers from generalized anxiety disorder, there is no further detail about her condition and the effects on her daily life, and the record contains no statement from the applicant's spouse providing information about the nature and severity of any emotional hardship she is experiencing. Although the AAO is sympathetic to the family's circumstances and recognizes that the input of any health professional is valuable, the record does not show that the applicant's spouse's psychological hardship and the symptoms she has experienced are extreme or atypical compared to others separated from a spouse. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

Counsel contends that the applicant's spouse suffers from asthma and high blood pressure. Medical documentation in the record indicates that the applicant's spouse suffers from asthma, seasonal allergies, and fibromyalgia. However, there is no evidence in the record that the applicant's spouse is dependent upon the applicant for assistance in treating these medical disorders. In addition, the record indicates that the applicant's spouse has two adult children, and the record does not show that these children would be unable to provide their mother with any required medical support. Counsel further asserts that the applicant's spouse was going to undergo surgery for vaginal bleeding on May 16, 2013, and submits medical documentation to verify this. No further information has been provided concerning her current condition and her prognosis for recovery, and we are therefore unable to reach any conclusions about the severity of her condition and the need for any assistance.

Financially, the record indicates that the applicant's spouse is employed, and 2011 letter from her employer indicates that she was earning \$27,300 per year. There is no evidence in the record to conclude that the qualifying spouse is unable to meet her financial obligations in the applicant's absence.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate but expected difficulties arising whenever a spouse is removed from the United States. Although we are not insensitive to the applicant's spouse's situation, the record does not establish that the hardship she would face rises to the level of extreme as contemplated by statute and case law.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a

qualifying relative in the scenario of relocation *and* the scenario of separation. 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 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.