U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

Date: SEP 0 8 2014 Office: ACCRA, GHANA 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:

SELF-REPRESENTED

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, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion is granted and the prior AAO decision is affirmed.

The record reflects that the applicant is a native and 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 willfully misrepresenting a material fact in order to obtain a U.S. immigration benefit. The record indicates that the applicant is the son of a U.S. citizen and is the father of two Nigerian citizen children. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks 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 father.

The field office director determined that the applicant's qualifying relative father would experience extreme hardship were he to relocate to Nigeria, but found that the applicant failed to establish that extreme hardship would be imposed if the applicant were unable to join his father in the United States and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated November 4, 2011.

On appeal we found that the applicant had not established that his father would experience extreme hardship due to separation from the applicant. *Decision of the AAO*, dated April 8, 2013.[1]

On motion, filed on November 1, 2013 and received by the AAO on March 14, 2014, the applicant submits a statement from his father, medical documentation for his father, and documents related to his siblings in the United States. The record contains a previously-submitted statement from the applicant's father and medical documents for the applicant's father, business documents, mortgage documents for the applicant's sister's property, and financial documents. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (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.
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> . . . .
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> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

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[1] The decision on the appeal was reissued on September 25, 2013, to correct the address to which the decision was mailed.

> (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 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 [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 first 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's father 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 United States Citizenship and Immigration Services (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 of Immigration Appeals (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. 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.

In dismissing the appeal we affirmed the field office director's finding that extreme hardship would be imposed on the applicant's father in Nigeria. However, we found that the applicant failed to establish extreme hardship to his father due to separation from the applicant. We noted that the applicant's father states he owns a real estate business but he is having difficulty running his business because of his medical conditions and needs the applicant to help him. We determined, in part, that although the record establishes that the applicant's father suffers from health issues, the medical documentation in the record does not establish that separation from the applicant elevated his symptoms or that he requires the applicant's assistance because of his health condition. In addition, we found that although the applicant's father refers to financial difficulties, the record does not contain evidence showing that he is unable to support himself in the applicant's absence.

In a statement from the applicant's father on motion he states that he is in and out of the hospital, needs ankle surgery, needs assistance, and can no longer work. He states that his children in the United States have no time because of their bills, and that his daughters live in Tennessee and his son in New Jersey. The father states that the applicant has no job in Nigeria, but that he believes the applicant could find one in the United States so the father would not need to send money. In the applicant's previously-submitted statement, he asserts his younger siblings in the United States are occupied and living elsewhere and are unable to assist their father, whom the applicant will help with his business following foot surgery.

In the father's previous statement he indicated that due to his feet having been broken in a fall and problems with his eyesight, he can no longer cope with all his businesses and needs the applicant to look after them.

Medical documents submitted on motion include a question-answer sheet apparently completed by the father's doctor, a notice of scheduled surgery in November 2013, and general information about post anesthesia instructions. A previous letter from the father's physician, dated in June 2011, indicates that the

father was being treated for medical conditions including diabetes, hypertension, hyperlipidemia, and peripheral vascular disease. However, the letter does not indicate the seriousness, prognosis, or treatment plan of any condition. The medical documentation submitted on motion does not contain clear, updated information from the father's physician and without more detail or explanation we are not able to reach conclusions concerning the severity of the father's current medical condition, the treatment needed, or the necessity of the applicant's presence in the United States.

The record contains no documentation to support that the applicant's father is unable to operate his businesses in the applicant's absence or how exactly the applicant would contribute. Nor has any documentation been submitted establishing the father's expenses, assets, liabilities or overall financial situation, or that he supports the applicant in Nigeria, to show that without the applicant's physical presence in the United States the applicant's father experiences financial hardship.

We find that the applicant has failed to establish that his father will suffer extreme hardship as a consequence of being separated from the applicant. In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's father, considered in the aggregate, rise beyond the common results of inadmissibility to the level of extreme hardship.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, *supra* at 886. Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, *supra* at 632-33. 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 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. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

ORDER: The motion to reopen is granted and the underlying decision dismissing the appeal is affirmed.