



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

DATE:

**APR 08 2015**

Office: COLUMBUS, OH

FILE:

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to 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,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by Acting Field Office Director, Columbus, Ohio and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be 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 admission to the United States through fraud or a material misrepresentation. The applicant is the spouse of a U.S. citizen and the mother to a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to remain in the United States with her husband and two children.

In a decision, dated October 1, 2014, the acting field office director found that the applicant had failed to show extreme hardship to her U.S. citizen spouse as a result of her inadmissibility. The application was denied accordingly.

On appeal, counsel asserts that the acting field office director failed to consider the totality of the hardship in the applicant's case, specifically psychological hardship, the hardship that would result from relocating to Nigeria, and the emotional suffering that would be caused as a result of the applicant's spouse experiencing his wife suffering while in Nigeria and separated from their family. Counsel submits documentation of hardship to the applicant's U.S. citizen spouse and evidence that the applicant warrants a favorable exercise of discretion.

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.

The record reflects that on April 1, 2001 in [REDACTED], New York, the applicant presented a British passport belonging to her sister to enter the United States. 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 a material misrepresentation. The applicant's qualifying relative is her 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 record of hardship includes: counsel's brief, a statement from the applicant, a statement from the applicant's spouse, a statement from the applicant's son, a psychological evaluation for the applicant's spouse, two affidavits from friends and colleagues of the applicant's spouse, documentation regarding the current country conditions in Nigeria, financial documentation, and medical documentation for the applicant and her spouse.

The record establishes that the applicant's spouse will suffer extreme hardship as a result of relocation and as a result of separation from the applicant. In regards to separation, the applicant's spouse states that he will suffer extreme emotional and financial hardship. The record indicates that the applicant and her spouse met over 20 years ago and have two children. They initially married, then divorced, and then remarried. The applicant's spouse states that the applicant cares for their children allowing him to work more. He states that if the applicant were not in the United States he would have to work less and earn less of an income, causing financial difficulty as a result of his lower income and increased expenses given that he would be supporting the applicant in Nigeria. The applicant's spouse also states the he would suffer emotionally because he would see his children suffering as a result of being cared for by a single parent. He states that previously, he and the applicant both worked fulltime and the children suffered, so they decided to have the applicant stay at home full time while he worked as much as he could. The applicant's spouse states that medically he has a history of depression, anxiety attacks, diabetes, and hypertension. The psychological evaluation in the record indicates that the applicant's spouse stated that his history of depression and anxiety dates back to his previous marriage and the applicant being diagnosed with breast cancer in 2001. He states that his wife's immigration situation is exacerbating his mental health conditions, he has thought about suicide, and has been seeing a therapist for his symptoms. The psychological evaluation states that the applicant suffers from Adjustment Disorder and depression. The psychological evaluation, letters from his son, and letters from his two friends support his statements regarding his mental health. The applicant's son and colleagues indicate that the applicant's spouse is emotionally dependent on the applicant, that he was suffering depression when he was not together with the applicant, and that currently he is suffering anxiety over issues surrounding the applicant's immigration situation. Moreover, the applicant's spouse indicates that the applicant is a two time cancer survivor, being most recently

diagnosed in 2013. He states that given the lack of medical care in Nigeria, his wife would die if she could not continue with the level of health care she now has in the United States. The applicant's spouse states that he is concerned with country conditions in Nigeria and does not believe Nigeria is safe for his family. He states that he would suffer extreme emotional hardship as a result of having his wife living in a country with such conditions.

Furthermore, in regards to relocation, the applicant's spouse states that he would suffer extreme emotional, financial, and physical hardship. The applicant's spouse has significant ties to the United States. The applicant's spouse has lived and worked in the United States since 2000. He states that since he left Nigeria, he has only been back to visit on two occasions and for no more than 3 weeks at a time. The record indicates that the applicant's spouse owns a home and a business in the United States. He states further that he would not be able to find employment in Nigeria because of his age, his diabetes, and his training in an intensely technical environment. He explains that if he relocated to Nigeria he would not be able to reach his career goals and that it would cause him great emotional pain. He asserts that in Nigeria he and his family would also suffer from the lack of access to appropriate health care, serious safety concerns, and quality of life concerns. Specifically, concerning safety issues in Nigeria, the applicant states that he converted from Islam to Christianity and fears he would be a target for Boko Haram, a terrorist organization as declared by the U.S. State Department. The country conditions reports in the record support the applicant's spouse's concerns.

Considering in its totality the circumstances the applicant's spouse is facing as a result of the applicant's inadmissibility, the record now establishes that he will suffer extreme hardship. The applicant and her spouse have a long history together, which includes raising two children and suffering through two separate cancer diagnoses. The record also establishes that the applicant's spouse has a history of depression and anxiety and that he relies on the applicant emotionally. Furthermore, the record establishes significant professional and financial ties to the United States, which include property and business ownership as well as a professional career as a physician. Finally, the record includes various reports and articles establishing that relocating to Nigeria would be an extreme hardship to the applicant's spouse given the losses he would endure professionally and financially, as well as the serious health and safety concerns he would face as a result of relocating. Therefore, the applicant has established that her spouse would face extreme hardship if her waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

*Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of

standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

*Matter of Mendez-Moralez* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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). .

*Id.* at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.



The favorable factors in the applicant's case include: the extreme hardship her U.S. citizen spouse would face as a result of her inadmissibility, the applicant's U.S. citizen son and pending lawful permanent resident daughter, the lack of any criminal record, the remorse the applicant expresses for her actions, and the emotional support she provides her husband and children. The unfavorable factors in the applicant's case include her fraudulent entry into the United States and illegal residence in the United States.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. The burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.