



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: FEB 11 2015 OFFICE: ST. PAUL

File: [REDACTED]

IN RE: [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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, St. Paul, denied the waiver application. The applicant, through counsel, appealed the Field Office Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. The matter is now before the AAO on motion. The motion is granted, and we affirm our prior decision.

The record reflects 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure admission to the United States through willful misrepresentation. The Field Office Director concluded the applicant failed to establish extreme hardship would be imposed on a qualifying relative and denied his Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. We dismissed the applicant's appeal, finding that although the applicant established his U.S. citizen spouse would experience extreme hardship if she relocated to Nigeria, he did not show that her hardship would be extreme if she were to remain in the United States.

On motion, the applicant asserts that we misapplied the law regarding hardships upon separation by failing to give proper weight to the evidence in the record and to consider hardship factors in the aggregate. The applicant also submits new evidence to establish his U.S. citizen spouse would experience extreme hardship if she remained in the United States. *See Form I-290B, Notice of Appeal or Motion*, dated November 18, 2014; *see also Brief Submitted in Support of Motion*, dated November 20, 2014.

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). As the applicant has submitted new documentary evidence and asserted reasons for reconsideration, the motion to reopen and reconsider will be granted.

In addition to the evidence described in our previous decision, the record also includes, but is not limited to: an additional affidavit by the applicant's spouse; Internet articles concerning anxiety and depression; and academic, employment, and financial documents. The entire record was reviewed and considered in rendering a decision on the applicant's motion.

Section 212(a)(6) of the Act provides, in relevant part:

(C) Misrepresentation.-

(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 Act is inadmissible.

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

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

- (1) The Attorney General [now Secretary of Homeland Security (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 the applicant attempted to procure admission to the United States under the visa waiver program on April 18, 2009, by presenting a Spanish passport that did not belong to him and accordingly was placed in removal proceedings before the immigration court. The record also reflects the immigration judge denied the applicant's requests for asylum, withholding of removal, and protection under the U.N. Convention Against Torture; and the Board of Immigration Appeals (BIA) dismissed his appeal of the immigration judge's decision on September 30, 2011. Based on the foregoing, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and he requires a waiver under section 212(i) of the Act. The applicant does not contest this finding of inadmissibility.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant and his children is not relevant under the statute and is considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. 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-Morales*, 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 BIA 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 BIA 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 BIA 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 Id.* at 568; *In re Pilch*, 21 I&N Dec. at 632-33; *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. at 246-47; *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 BIA 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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 (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 support of his motion, the applicant submits an additional affidavit from his spouse dated November 19, 2014, in which she indicates she is suffering extreme hardship because of the applicant's inadmissibility as: she has been diagnosed with major depressive disorder but is unable to continue receiving treatment for depression and anxiety, as she works and attends school to pursue her degree as a registered nurse; her depression is worsening, and her anxiety keeps her awake most nights; she has struggled “to make ends meet” without financial assistance from the applicant, who lost his work authorization after his adjustment application was denied; she resumed her employment on March 14, 2014, and being the sole provider for their family has taken a toll on her grades; between her work and school schedule, she finds it difficult to find time to see her children; she does not qualify for public assistance because she is employed; she is unable to enroll her children in daycare as it costs \$200, so

the applicant takes care of them at home; and her children's happiness and wellbeing are her priority, and were they to suffer emotionally because of the applicant's absence, it would hurt her emotionally.

To corroborate his spouse's statements concerning her mental health, the applicant submits Internet articles by the [REDACTED] that generally discuss anxiety, postpartum depression, and how antidepressant medications treat mild depression. To show that his spouse's academic and employment schedules do not allow time for medical appointments, he also submits a copy of his spouse's work schedule for September 2014 and a copy of her class schedule for the fall 2014 semester.

In our previous decision, we addressed the evidence showing that the applicant's spouse's mental health concerns include anxiety, postpartum depression, and a diagnosis of major depressive disorder. However, we previously noted that the record lacks details concerning the severity of her mental health conditions or any treatment or assistance provided. While we recognize certain priorities, such as commitments to family, employers and education, affect individuals' flexibility in managing daily activities, the supplementary evidence the applicant submits with his motion, limited to his spouse's additional statement and medical articles, does not sufficiently address concerns regarding a lack of detail about this matter. Accordingly, we are not in a position to reach a different conclusion concerning the severity of the applicant's spouse's mental health conditions and hardship that may be related to such conditions. We further note the record does not reflect the negative effect that the applicant's spouse asserts her psychological conditions have on her academic performance. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, as we noted previously on appeal, we recognize the difficulties of raising a child in the absence of a parent and we consider hardship to the applicant's children to the extent it results in hardship to the applicant's only qualifying relative, his U.S. citizen spouse. The record lacks sufficient evidence describing the severity of the applicant's spouse's mental health conditions and treatment or assistance provided because of such conditions. As a result the record does not establish how hardship to the applicant's children would affect his qualifying relative, his U.S. citizen spouse.

To supplement the record in support of statements concerning his family's financial situation, the applicant submits a pie graph, indicating a breakdown of monthly expenses amounting to \$3,322. He states the family's monthly income is \$2,560. The applicant also submits: paystubs, indicating his spouse earns an hourly rate of \$20; a year-long residential lease agreement commencing on November 1, 2014, indicating a monthly rent of \$880; a collection agency statement, reflecting an outstanding balance of \$2,734 as of July 24, 2014; and billing statements for legal fees, reflecting a balance of \$322.45 as of November 17, 2014, and for electrical services reflecting a past-due amount totaling \$66.39 as of November 7, 2014. Although the record lacks information concerning the requirements for entitlement benefits in Minnesota, where the applicant and his spouse reside, the record reflects that the applicant's spouse would experience a degree of financial hardship as she serves as the sole breadwinner and the applicant's potential income would likely augment their household's self-reported monthly deficit of \$762.

Though the record is sufficient to establish the applicant's spouse may experience a degree of financial and emotional hardship in the applicant's absence, the evidence, considered in the aggregate, does not establish the applicant's spouse would suffer extreme hardship as a result of separation from the applicant, as the record lacks sufficient evidence concerning the severity of her mental health conditions and how such conditions affect her emotional wellbeing.

In our previous decision, we determined that the evidence established that the applicant's U.S. citizen spouse would suffer extreme hardship upon relocation to Nigeria to be with the applicant given her length of residence in, and family ties to, the United States; conditions in Nigeria, which would affect her emotionally and medically; and the normal hardships associated with relocation. The record continues to reflect the cumulative effect of the hardship the applicant's spouse would experience upon relocation due to the applicant's inadmissibility rises to the level of extreme.

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. at 886. 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. In re Pilch*, 21 I&N Dec. 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 this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find the applicant has not established extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act.

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 motion is granted. The prior decision of the AAO is affirmed.