

(b)(6)

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



U.S. Citizenship  
and Immigration  
Services

[Redacted]

DATE: FEB 26 2015

OFFICE: HOUSTON

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:

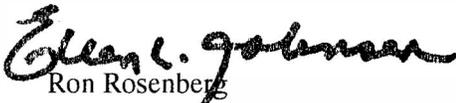
[Redacted]

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, [REDACTED] Texas denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 procuring entry into the United States by fraud or willful misrepresentation. The applicant is the beneficiary of an approved Form I-360, as the self-petitioning spouse of an abusive U.S. citizen, and seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director denied the application after finding the applicant inadmissible and balancing the positive factors for the applicant against the adverse. *See Decision of the Field Office Director*, dated March 18, 2014.

On appeal, counsel for the applicant asserts that the applicant did not make a misrepresentation to procure entry into the United States because his assertion that he was married during a December 3, 2007 consular interview was accurate. Counsel further states that the applicant's hardships would be extreme if his waiver application were denied and the applicant's claimed misrepresentation is not material to a decision on his adjustment of status application.

In support of the waiver application and appeal, the applicant submitted affidavits, documents concerning his divorce from his first wife, letters of support, a psychological report for the applicant, medical documentation, educational documentation, identity documents, financial documentation, documentation submitted in support of his approved Form I-360 application, background country conditions for Nigeria and background information concerning divorce decrees in Nigeria. The entire record was reviewed and considered in rendering this decision.

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 or, in the

case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

The applicant submitted a Form DS-156, Nonimmigrant Visa Application, signed November 30, 2007, stating that he was married to [REDACTED]. The applicant also attended a consular interview in [REDACTED] Nigeria on December 3, 2007, during which he stated that he was married with children. However, in a Form I-601, Application for Waiver of Grounds of Inadmissibility, signed by the applicant on August 21, 2009 and a Form G-325A, Biographic Information, signed by the applicant on July 9, 2008, the applicant states that his divorce from his first wife took place on [REDACTED]. A divorce judgment from a court in [REDACTED] states that the applicant and his first wife were married on [REDACTED] and his wife filed a suit for the dissolution of their marriage on [REDACTED]. The document also states that the court dissolved the marriage from the date of [REDACTED] and right of appeal was given to both parties within 30 days from that date or the court order became final.

The applicant asserts that he was truthful concerning his marriage status during his consular interview on December 3, 2007 because, at the time, his divorce to his first wife was still pending.<sup>1</sup> The applicant contends that on [REDACTED] a provisional nisi decree for his divorce to his first wife was issued, allowing a 30-day waiting period for appeals and reconciliation. The applicant asserts that his first wife filed an appeal on that same date so that their divorce was final on [REDACTED], when the appeal was withdrawn, as indicated on the decree absolute.

The record contains four court documents concerning the applicant's divorce from his first wife: a divorce judgment dated [REDACTED], a decree nisi dated [REDACTED], a decree absolute dated [REDACTED] and another decree absolute dated [REDACTED]. The divorce judgment states that the applicant's spouse filed for divorce on [REDACTED] on the grounds of lack of love and care, incompatibility and intolerable behavior. The judgment further states that on [REDACTED] both the applicant and his spouse were present in court and the court dissolved the marriage from that date, becoming final within 30 days if neither party exercised the right to appeal. This document was submitted with his Form I-130 as support of the dissolution of his first marriage. The Form I-130 was filed on July 20, 2008, after the decree absolutes contained in the record were issued. The Form I-130 also states that his first marriage was ended on [REDACTED]. The submitted decree nisi states that on [REDACTED] neither the applicant nor his spouse were present in court, with only the applicant's ex-wife's lawyer present. The decree nisi further states that the dissolution of marriage would be absolute three months from that date. The record contains decree absolutes stating that the decree nisi for the applicant and his ex-wife became absolute on [REDACTED].

<sup>1</sup> The record reflects that on [REDACTED] prior to his consular interview and while he was still married to his first wife, he married another individual in Virginia. This marriage was annulled, finalized on [REDACTED] as he was already married to his first wife at the time of the second marriage. A record of nullification indicates that the decree of nullity was in effect from the date of solemnization of the purported marriage, [REDACTED].

There is no explanation concerning the discrepancy between a court judgment stating that the dissolution of the applicant's marriage would be final on [REDACTED] if neither side appealed within 30 days, and a court decree nisi stating that the dissolution would be finalized in three months from that same date. There is also no explanation concerning the discrepancy between the court judgment stating that the applicant and his spouse were both present in court on [REDACTED] and the decree nisi stating that neither the applicant nor his spouse was present. Further, the applicant asserts that his spouse exercised her right to appeal the dissolution on [REDACTED]. The applicant asserts that his wife appealed the judgment because of the custody finding, but did not submit a copy of the appeal. In addition, the record contains two separate decree absolutes for the divorce between the applicant and his first wife. The first decree absolute, dated [REDACTED] from the [REDACTED] Judicial Division, [REDACTED] at [REDACTED] states that the dissolution of marriage became absolute on the same date and refers to suit no: [REDACTED]. It also states that the determination or consideration of appeal was not applicable. The second decree absolute, dated [REDACTED] from [REDACTED] Judicial Division, states that the dissolution of the applicant and his first wife became absolute on [REDACTED] due to the discontinuation of the appeal by the petitioner on [REDACTED]. The second decree refers to suit no: [REDACTED] and the letterhead reads "In The High Cout (*sic*) of [REDACTED]." The court judgment dated [REDACTED] refers to Suit No. [REDACTED]. There is no explanation concerning why the record would contain two separate decree absolutes and a court judgment with separate suit numbers for the same divorce, with a misspelling in the court's letterhead in the second decree and differing information on whether an appeal had been entered.

The applicant contends that he mistakenly used the divorce date of [REDACTED] in submitted immigration forms because he forgot about the decree absolute at the time. The burden is on the applicant to demonstrate by a preponderance of the evidence that he did not willfully misrepresent a material fact to procure a nonimmigrant visa. *See* Section 291 of the Act, 8 U.S.C. § 1361. The evidence of record is insufficient to make a finding that the applicant did not misrepresent his marital status at his consular interview. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring a visa through fraud or misrepresentation.

As the applicant is a VAWA self-petitioner, 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 individual, which includes the alien or the U.S. citizen, lawfully resident or qualified alien parent or child of the applicant. The applicant is the only qualifying individual in this case. If extreme hardship to a qualifying individual 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 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*, 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.

The record reflects that the applicant is a 49-year-old native and citizen of Nigeria. The applicant is currently residing in [REDACTED] Texas.

Counsel for the applicant asserts that the applicant, as a VAWA self-petitioner, suffered at the hands of his U.S. citizen ex-wife, so that he would be more vulnerable to emotional and other hardships he would suffer upon return to Nigeria. The applicant asserts that his ex-wife cheated on him with other men, threatened him with deportation and hit him before their separation and divorce. The record contains a police report from December 20, 2010 stating that the officer, due to conflicting accounts from the applicant and his spouse, was unable to determine the primary aggressor in the incident. The applicant asserts that since his ex-wife was the owner of their home, he went to a shelter to reside after this police report. The record contains a letter from [REDACTED] [REDACTED] stating that the applicant resided at their domestic shelter and received medical and employment assistance.

The record contains letters from a pastor and reverend stating that the applicant sought prayer and counsel following his abusive relationship with his ex-wife. The pastor states that she is a good friend of the applicant and the applicant has been residing with her since he left the shelter in January 2011.

The record contains a psychological report for the applicant stating that the applicant is suffering from chronic post-traumatic stress disorder based on the level of distress and symptoms he experienced in his second marriage. It is noted that though the psychological report states that the applicant was married two times, the record reflects that the applicant was married on three occasions and his marriage to his third wife was the basis of his VAWA petition. The report states that the applicant was diagnosed with hypertension and headaches in February 2012. The report further states that the diagnosis of post-traumatic stress disorder is based upon the applicant's history, reported symptoms and Minnesota Multiphasic Personality Inventory-2-RF (MMPI-2-RF) results. It is noted that the report indicates that the applicant underreported his symptoms due to his personality traits and does not contain the applicant's score results from the test. Despite a diagnosis of chronic post-traumatic stress disorder for the applicant, there is no treatment recommendation in the report. The report concludes that upon return to Nigeria, the applicant would suffer such tremendous emotional and psychological pressures that he would lose his ability to function at a normal level, suffer from severe anxiety, depression and an incapacitating level of post-traumatic stress disorder symptoms.

The applicant asserts that if he returns to Nigeria, he will be mocked and socially chastised for becoming a victim of his spouse's abuse and adultery. The applicant also contends that though he is indigent in the United States, he has the support of friends and has been studying accounting. The applicant asserts that he would not be able to advance in his education in Nigeria and would face bleak employment prospects. The record contains background country conditions concerning Nigeria. It is noted that the applicant's Form G-325A reflects that he was employed as an accountant in Nigeria for over eight years so that he has years of professional working experience in his native country. Further, the articles concerning families in Nigeria do not indicate that the applicant will face difficulties in Nigeria, as a previously abused spouse.

The applicant asserts that, as a Christian, he would fear for his life upon return to Nigeria. The applicant also asserts that he believes that he would be a targeted victim of crime upon return to Nigeria, as he would be returning from the United States. The U.S. Department of State has issued a travel warning for Nigeria, dated February 2, 2015, warning of the risks of travel to Nigeria and stating that the extremist group of Boko Haram has been targeting, amongst other structures, churches. The travel warning further states that kidnapping and violent crimes are a concern throughout the country.

Considered in the aggregate and based largely on current conditions in Nigeria, the applicant has established that he would face extreme hardship if his waiver request were 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 her 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.

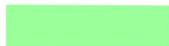
As a matter of discretion, the applicant does not merit a grant of this waiver. The negative discretionary factors for the applicant include his physical presence in the United States beyond the authorized date and multiple misrepresentations made to immigration officials.

The applicant stated to a consular officer on December 3, 2007 that he was married to his first wife. However, the applicant signed and submitted two immigration forms stating that his divorce from his first wife was finalized on [REDACTED]. In support of his assertion that he did not misrepresent his marital status, the applicant submitted conflicting court documents. Further, in a subsequent adjustment of status interview, the applicant asserted that he had never been asked his marital status at a consular interview.

The applicant's third wife filed a Form I-130 on his behalf on July 20, 2008, stating that he had only been married one time previous to their own marriage. The applicant also submitted a Form G-325A, signed July 9, 2008, stating that he had been married one previous time. However, the record reflects that the applicant married another individual, his second wife, on [REDACTED]. The record reflects that the applicant was still married to his first wife at the time that he married his second wife. The applicant asserts that he did not reveal his second marriage in his immigration paperwork because he hoped it would be erased from his life. The applicant further contends that his second marriage had nothing to do with the Form I-130 submitted on his behalf by his third wife and did not matter in his immigration intent.<sup>2</sup>

---

<sup>2</sup> Counsel asserts that the Field Office Director's discretionary denial of the applicant's Form I-601 application was erroneous, as the applicant's failure to disclose his second marriage was not material to the ultimate decision of granting adjustment of status in the United States. Though materiality is requisite in demonstrating inadmissibility under section 212(a)(6)(C)(i) of the Act, there is no such requirement in making a discretionary finding.



The favorable factors for the applicant include the extreme hardship he would face if he returned to Nigeria, the letters of support submitted on his behalf and evidence of his employment and payment of taxes during periods in the United States.

The immigration violations committed by the applicant are serious in nature, took place on more than one occasion and the applicant has not submitted or demonstrated evidence of reformation or rehabilitation. Rather, the applicant contends that it was shame and ignorance rather than the intent to defraud that led to his misrepresentations. We find that the applicant has not established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is not 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 not been met.

**ORDER:** The appeal is dismissed.