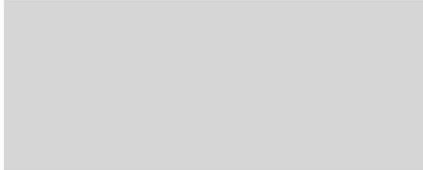




U.S. Citizenship  
and Immigration  
Services

(b)(6)



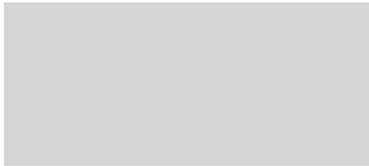
DATE: **JUL 24 2015**

FILE #: [REDACTED]  
APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

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 the Field Office Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 procuring a visa to the United States through willful misrepresentation of a material fact. The applicant's spouse is 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), in order to reside in the United States.

The Field Office Director found that the applicant did not establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Field Office Director*, dated April 29, 2014.

On appeal, the applicant, through counsel, asserts that he did not willfully misrepresent himself and his spouse would experience extreme hardship if his waiver application is denied. *Brief in Support of Appeal*, dated August 13, 2014.

The record includes, but is not limited to, counsel's brief, statements from the applicant and his spouse, financial records, medical records and country-conditions information about Nigeria. 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.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now Secretary of the Department 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 that the applicant presented an altered Form I-129, Petition for Nonimmigrant Worker (Form I-129), from petitioner [REDACTED] to a U.S. consular officer in [REDACTED], to obtain a P-3 visa; he falsely represented to the consular officer that he was part of a band that

would be touring the United States; it was later found that he was not listed on the original Form I-129; and the P-3 visa was revoked on October 15, 2012.

The applicant, in his Form I-601 and through counsel, states that he has expertise in a popular Nigerian percussion instrument called the talking drum; he was approached by an individual representing [REDACTED] to come to the United States to perform with a musical group introducing traditional African music to the United States; he accepted the offer and the agent asked him to submit his personal information for visa processing at the U.S. Embassy; he was not involved in the processing and submission of any document to the U.S. Embassy, as this was done by [REDACTED]; the agent claimed that he had the authority to deal with the U.S. Embassy on the principal's behalf; he presented the approved Form I-129 to the U.S. consulate in [REDACTED], Nigeria, he was interviewed and a P-3 visa was issued to him; he was unaware of any possible misrepresentation relating to the procurement of the visa; he did not misrepresent himself at his P-3 visa interview; it is possible that the petitioner committed the misrepresentation on the Form I-129; the visa was revoked without the knowledge of the applicant therefore he was not given an opportunity to defend himself against the visa fraud charge; and he was deprived of due process.<sup>1</sup>

We will now address whether the applicant's misrepresentation was willful. The term "willful" should be interpreted as knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the factual claims are true. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). We are unable to find that an applicant is inadmissible for making a willful misrepresentation of a material fact without "clear, unequivocal, and convincing evidence." *See Kungys v. United States*, 485 U.S. 759, 771-72 (1988).

Though the applicant states he did not intend to misrepresent information to receive a visa, the record does not include sufficient documentary evidence to support his claim. An alien cannot disavow responsibility for any misrepresentation made on the advice of another unless the alien is lacking the capacity to exercise judgment. *See also* 9 FAM 40.63, Note 5.2. The record includes no evidence showing the applicant was incapable of exercising his judgment during the visa-application process or was unaware of his actions. As such, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for procuring a non-immigrant visa by willful misrepresentation of a material fact.

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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver and

---

<sup>1</sup> Constitutional issues are not within the appellate jurisdiction of the AAO; therefore the applicant's assertion that he was deprived of due process will not be addressed in the present decision. Similarly, we will not address the applicant's assertions regarding his visa's revocation, because this issue also is not within the jurisdiction of the AAO

U.S. 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 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 U.S. 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 at 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.

We will first address hardship to the applicant's qualifying relative upon relocation to Nigeria. The applicant states that the United States is the only country his spouse knows; she has no ties to Nigeria; and she would lose her closeness to her mother, siblings, and uncle. The applicant, through counsel, states that it would not be possible for his spouse to leave the United States due to her family obligations and "the possibility of future obligations." The applicant's spouse states that her mother is disabled and relies on her to help with her daily needs. The record includes a county employment services referral form which lists "disabled" for the applicant's spouse's mother and a photograph of her mother with a leg brace.

The applicant states that by relocating, his spouse would lose her job; she would have little or no hope of being gainfully employed in Nigeria; she will not be able to meet her debt obligations; half of the population is unemployed or underemployed in Nigeria, including those with an advanced degree; his spouse does not have an advanced degree; the average daily income in Nigeria is about \$3 per day; and good health care would not be affordable. The record includes a student loan statement for the applicant's spouse reflecting a balance of \$3,637. The record also includes articles discussing high levels of unemployment in Nigeria.

The applicant states that there are safety issues in Nigeria due to a religious war between the government and Boko Haram. The record includes articles describing Boko Haram's terrorist activity in Nigeria. The U.S. Department of State issued a travel warning, dated February 2, 2015, for Nigeria that details safety issues in the country.

The record reflects that the applicant's spouse was born and raised in the United States, she has known no other country, her entire family is in the United States, she cares for her mother and she has no ties to Nigeria. The record reflects that it would be difficult for her to obtain suitable employment in Nigeria, and meet her debt obligations in the United States. In addition, there are documented safety issues in Nigeria. Based on the totality of the hardship factors presented, we find that the applicant's spouse would experience extreme hardship if she relocated to Nigeria.

Addressing the hardships the applicant's spouse would experience if she remained in the United States without the applicant, she states that the applicant is a good spouse and provider; she loves the applicant; the applicant comforted her and helped her when she had a miscarriage; and the applicant helps her mother with her daily needs. The applicant states that he and his spouse are best friends; he has "impacted" his spouse in many "positive ways"; and she could experience depression if the waiver application is denied. The applicant, through counsel, asserts that his spouse's father is deceased and she would not be able to help her mother raise her brother without his guidance and male influence. The record includes evidence of the applicant's spouse's father's death and a photograph of the applicant's spouse and her brother.

The applicant states that he and his spouse have joint financial obligations; their rent is \$850 per month; their car loan balance is \$6,000; they have several other debts; and he helps pay the bills. As noted above, the applicant submits his spouse's student loan statement, showing she owes \$3,637. The record also includes numerous bank statements with a low balance and overdrafts. The applicant also submits insurance, cable, utility and rent bills. The 2013 federal tax records reflect the applicant's income was \$5,283 and his spouse's income was \$21,371.

The record reflects that the applicant's spouse may experience some emotional and financial hardship without the applicant. However, other than the statements of the applicant and his spouse, the record lacks sufficient documentary evidence to corroborate specific claims of emotional, financial, and medical hardship that, in their totality, establish that the applicant's spouse would experience extreme hardship upon remaining in the United States. The applicant does not describe how he contributes to the family's household expenses. In addition, he submits no medical or other evidence to show that his spouse would experience depression without him or that he assists her in taking care of her family.

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. 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.

The documentation in the record does not establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Therefore, we find that no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

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.