



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF E-H-

DATE: NOV. 19, 2015

APPEAL OF NEWARK FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of Nigeria, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Newark, New Jersey, denied the application, and we summarily dismissed a subsequent appeal. The matter is now before us on motion to reopen. The motion to reopen will be denied.

The Director found the Applicant to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or misrepresentation. Concluding the Applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, the Director denied the application, accordingly. *Decision of the Field Office Director*, July 10, 2014. We summarily dismissed the Applicant's appeal for failure to identify a basis for the appeal. *AAO Decision*, March 16, 2015. We now reopen on our own motion in order to consider documentation received but not reviewed prior to issuance of the dismissal.

On appeal, the Applicant asserts she provided sufficient evidence to show that extreme hardship to her husband would result from her inability to remain in the United States. In support, she offers documentation including a psychological evaluation, medical records, financial information, supportive statements, and country condition information. The record contains evidence previously submitted, including: documentation of immigration history; marriage, birth, and naturalization certificates; and medical history. The entire record was reviewed and considered in rendering a decision on the appeal.

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

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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Section 212(i)(1) of the Act provides:

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 the Applicant attempted to enter the United States on August 30, 2000, using the passport of another person and was ordered removed pursuant to section 235(b)(1) of the Act and expeditiously removed. She again entered the country on September 28, 2001, after obtaining immigrant visa, but failed to divulge on the visa application her previous attempt to enter the United States through fraud and subsequent removal. In 2005, she made additional omissions of material fact on Form I-751 when applying for removal of the condition on her resident status, neglecting to identify all her children, including two children whose father is her current husband who were born during her marriage to her previous husband.<sup>1</sup> The Applicant was granted permanent resident status, and in 2010 she applied for U.S. citizenship but failed to divulge her prior fraudulent acts to the examining officer, and her Form N-400, Application for Naturalization, was denied. In addition, the Applicant was issued a Notice to Appear charging her with deportability for being inadmissible at the time of her 2001 admission as a conditional resident and placed in removal proceedings. The Immigration Judge sustained the charges against her and revoked her permanent resident status, and removal proceedings were terminated on December 17, 2013, so that she could apply for adjustment of status based on the immediate relative petition filed by her current husband. The Applicant does not dispute that she is inadmissible under section 212(a)(6)(C) of the Act for fraud and misrepresentation and thus requires a waiver of inadmissibility.

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 or her children can be 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. If extreme hardship to a qualifying relative 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*,

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<sup>1</sup> At the time she filed the Form I-751 in 2005, two children fathered by her current husband had been born in [redacted] and [redacted] while she was married to her previous husband -- the petitioner through whom she immigrated and by whose marriage she was able to adjust status to that of lawful permanent resident. She and her current husband had a third child the [redacted]

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. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998) (quoting *Contreras Buenfil v. INS*, 712 F.2d 401, 403 (9<sup>th</sup> 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

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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 qualifying relative asserts that relocating abroad to remain with the Applicant would impose a hardship upon him, claiming that his age (59) and medical condition would prevent him from finding a job, while exposing him and his children to personal safety threats. The Applicant provides on appeal an October 2014 medical report describing pain her husband has experienced due to a March 2013 motor vehicle accident. The doctor states that the qualifying relative incurred a “whiplash” injury involving spinal trauma, misalignment of vertebrae, stretched ligaments, and irritated nerves resulting in back pain, neck pain, knee pain, and shoulder pain. The medical opinion confirms the injury claimed and further concludes that associated pain and discomfort are permanent. The record reflects that the Applicant’s spouse remains employed full-time by [REDACTED] as a material handler working 50 hours weekly, but there is no indication of his job responsibilities and whether they have been affected by his injury or whether similar work would be available in Nigeria. There is no indication of how he supported himself in Nigeria before coming to the United States in December 1997.

Regarding the claim that the qualifying relative’s personal security would be negatively impacted by returning to Nigeria, the record contains country condition reports establishing that terrorism, violence, and kidnapping are concerns throughout the country. *See Nigeria Travel Warning*, U.S. Department of State (DOS), July 27, 2015. The qualifying relative emigrated from Nigeria nearly 17 years ago on a diversity visa and naturalized in 2005. He claims to have no relatives here besides his immediate family and states that his widowed mother and adult son are still living in Nigeria. He states that moving overseas with the Applicant would entail bringing along their three U.S.-born children, ages [REDACTED] and [REDACTED] as there would remain no one in this country to care for them. Besides threats to his own safety, the qualifying relative asserts that his children would be at risk in Nigeria. We note that the DOS travel warning advises U.S. citizens to be vigilant about safety threats in Nigeria but does not specifically mention the qualifying relative’s native [REDACTED]. The Applicant’s spouse further claims that his [REDACTED]-year-old child has an asthma condition that would cause him problems there, but the record contains no evidence of the severity of this condition or that treatment would be unavailable. There is likewise no indication the qualifying relative would be unable to continue on any treatment regimen in Nigeria for his medical condition.<sup>2</sup> We recognize that relocating overseas would involve inconvenience and uncertainty for the Applicant’s spouse, but without further evidence of a specific threat to himself and his family, unavailability of employment or medical care, or of other claimed hardships in Nigeria, the Applicant has not met her burden of establishing hardship to a qualifying relative beyond the usual consequences of inadmissibility if he relocates with her to Nigeria.

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<sup>2</sup> Medical records indicate he has had limited success managing his pain and state that “permanent residuals of the injury cannot be completely resolved by way of further treatment intervention,” but do not show his situation would be worse in Nigeria.

The qualifying relative also claims that if his wife departs the United States, the impact of her absence upon him would exceed the common or typical consequence of removal or inadmissibility and rise to the level of extreme hardship, due to the resulting loss of her emotional support and physical assistance, closeness with their children, and contribution to household income. In support of her husband's claim, the Applicant presents a psychological report as evidence of his mental state and medical records regarding injuries he suffered in a 2013 vehicular accident. Based on an October 2014 interview in which the Applicant's husband reported feeling depressed and having eating and sleeping problems, a psychologist diagnosed him with possible adjustment disorder that might lead to major depression. The psychologist reports that the Applicant's husband stated being worried about the consequences to his three children of being without the Applicant, their mother and primary caregiver, since his work schedule would not permit him to assume his wife's day-to-day role. *Psychological Evaluation*, October 28, 2014. There is no evidence that the psychologist interviewed the children or their mother. The psychologist does not indicate using any standardized assessments as part of his evaluation, and the report does not reference information from sources other than the qualifying relative. Although noting the patient expressed concern for his wife's safety in Nigeria and observing that her departure will likely cause stress and disharmony to the family, the report offers no recommendations to address the qualifying relative's current emotional condition. While we acknowledge that the Applicant's spouse would experience emotional hardship upon separation from the Applicant, the evidence on the record does not establish the severity of this hardship or the effects on his daily life. Regarding hardship from physical injuries sustained in the accident, the record confirms the Applicant's husband has sought relief from residual pain. However, medical records do not establish the seriousness of his condition or any functional limitations it imposes, and there is no evidence he requires care or assistance that only the Applicant may provide. There is no evidence he will be unable to travel overseas to visit his wife to ease their separation.

Immigration records indicate that the qualifying relative emigrated in 1997 at the age of 41 to the United States on a diversity visa. Since 1999, he has been employed as a material handler, and he reports working a night shift that allows him to take the children to school in the morning and pick them up at the end of the school day. He claims this arrangement is possible because his wife cares for the children while he is at work and that she performs household tasks which his injury prevents him from doing. We note that there is no evidence concerning whether his injury affected his ability to perform his job. He claims to have nobody to assist with caring for the children in his wife's absence, but there is no evidence showing what childcare would be required, that he has researched childcare options, or that he would be unable to arrange for childcare while he is at work. A 2014 joint tax return reports joint income of nearly \$70,000, but the Applicant did not provide W-2 forms specifying the earnings of each spouse. The record does contain a copy of a W-2 form indicating that the Applicant earned \$20,000 in 2012. The 2014 tax return, as well a 2012 tax return for the Applicant's spouse, lists the qualifying relative's mother as a dependent, thus raising the question of whether the children's grandmother is now residing with the family, despite prior statements that the Applicant's spouse had no other relatives in the United States.<sup>3</sup>

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<sup>3</sup> The Applicant's husband indicated elsewhere that his ties to Nigeria included his widowed mother and an adult son

Regarding financial hardship, besides lacking evidence of the Applicant's relative contribution to household income, the record contains no evidence supporting the claim that the qualifying relative will be unable to pay his bills without his wife's income. While sensitive that his wife's departure will remove a wage earner from the household, there is no showing that her continued presence is needed to spare him from experiencing financial problems.

For all these reasons, while we recognize that the Applicant's absence will cause hardship to her husband, there is insufficient evidence that the cumulative effect of the emotional and financial hardships due to their separation would rise to the level of extreme. We conclude based on the evidence provided that, were he to remain in the United States without the Applicant due to her inadmissibility, her absence would not cause him hardship beyond those problems normally associated with family separation.

The documentation on record, when considered in its totality, reflects the Applicant has not established that her husband would suffer extreme hardship if the Applicant cannot remain in the United States. The record demonstrates that he faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a family member is removed from the United States or refused admission. Although we are not insensitive to the qualifying relative's situation, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law. Considered in the aggregate, the evidence has not established that the Applicant's husband would face extreme hardship if her waiver request is denied. Further, even were we to conclude that her husband would experience extreme hardship, the record reflects that the Applicant does not merit a waiver as a matter of discretion.

Extreme hardship is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 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.

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

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who were living there. See *Brief in Support of Form I-601*, July 8, 2014.

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 stated 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 an applicant for 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 this matter are the hardships the Applicant's United States citizen spouse and children would face if the Applicant is not granted this waiver and her apparent lack of a criminal record. The unfavorable factors in this matter are the Applicant's attempt to enter the United States with a fraudulent passport, her removal and re-entry one year later without obtaining permission to reapply for admission, her fraud and misrepresentation to procure an immigrant visa and admission as a conditional resident, and her material misrepresentations when applying for removal of the condition on her residence and for naturalization. We note, too, that the Applicant gave birth to three children of her current spouse while married to the U.S. Citizen spouse through whom she obtained lawful permanent resident status, including one child born ten months after she married her former spouse, calling into question whether that marriage was entered into in good faith rather than solely for the purpose of evading the immigration laws. We further note that the Applicant's 2012 marriage on which the waiver request is based occurred after detection of her attempts to circumvent lawful immigration processes and while removal proceedings were pending against her. Finally, the denial of the Applicant's Form N-400, Application for Naturalization, recites detailed findings supporting the conclusion that, based on the Applicant's "pattern of giving false statements while under oath" she is "a person who lacks good moral character." The Applicant has provided no additional offsetting favorable evidence.

The Applicant's violations of the immigration laws are serious, and the negative factors in this case outweigh the positive factors. Given the Applicant's multiple violations of the immigration laws, we find that a favorable exercise of discretion would not be 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.

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**ORDER:** The motion to reopen is denied.

Cite as *Matter of E-H-*, ID# 10599 (AAO Nov. 19, 2015)