



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

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

MATTER OF I-A-

DATE: OCT. 22, 2015

APPEAL OF NEW YORK DISTRICT 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 Director, New York District Office, New York, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The Applicant 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 willfully misrepresenting a material fact to procure an immigration benefit. He seeks a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse.

In an October 4, 2014, decision, the Director concluded that the Applicant had not established that the bar to his admission would impose extreme hardship on his qualifying relative, his spouse, and denied the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the Applicant indicates that he inadvertently did not disclose the fact that his prior visa was denied when he applied for his second non-immigrant visa in 2011. The Applicant further indicates that such misrepresentation was minor, and not a material misrepresentation. The Applicant also asserts that the Director erroneously did not find extreme hardship, and states that his spouse would suffer emotionally and financially without the Applicant.

The record contains, but is not limited to: a brief submitted on behalf of the Applicant; the spouse's statement; documentation related to the spouse's tuition and loans; a letter from the spouse's current employer; financial documentation; country condition materials; and identification documents for the spouse and Applicant. The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(6)(C) of the Act states, in pertinent part:

- (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 chapter is inadmissible.

The record indicates that the Applicant's non-immigrant visa was denied in Nigeria on March 27, 2000. However, on September 12, 2011, when the Applicant applied for a second non-immigrant visa, he did not disclose his prior denial history. He also did not disclose his prior visa denial when he entered the United States on three subsequent occasions.

An applicant is inadmissible under section 212(a)(6)(C)(i) of the Act when he makes a willful misrepresentation of a material fact in order to obtain an immigration benefit. A misrepresentation is generally material only if by it the applicant received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The Board of Immigration Appeals (BIA) has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either: (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well resulted in proper determination that he be excluded. *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

The Applicant indicates that he inadvertently did not disclose his prior visa denial when he applied for his second non-immigrant visa in 2011. The Applicant further indicates that such misrepresentation was minor, and not a material misrepresentation. The Applicant did not provide any evidence or explanation as to why his misrepresentations were minor and not material, and he does not address his failure to disclose his denials on the three separate occasions when he entered the United States. As the Applicant did not disclose his prior visa denial in his second visa application or during his three entrances into the United States, he was not questioned about his prior visa denial, thereby shutting off a line of inquiry. If additional questions regarding his past visa denial were asked, as they related to his eligibility for obtaining a visa, the Applicant's second visa could have been denied. The Applicant's misrepresentations render him inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides, in pertinent 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 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 [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.

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 his child can be considered only insofar as it results in hardship to a qualifying relative. The Applicant's 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 U.S. Citizenship and Immigration Services then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 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.

The Applicant’s spouse asserts, in her hardship statement, that the Applicant provides her with financial and emotional support. With regard to the financial hardship that the spouse would experience upon separation, the spouse states that the Applicant helps her and her son financially and assists her to pay her student loan debt of over \$120,000. The record contains documents pertaining to the spouse’s tuition and debt, a letter from her current employer, pay stubs for the Applicant, banking statements and expenses related to cell phones. The materials related to the spouse’s student loan debt demonstrate that she has student loan debt, but that her outstanding balance is \$7,894.29 and that her original loan was \$12,500. While she may have other loans, there is no evidence of them in the record, nor does the record contain evidence demonstrating that the Applicant is assisting the spouse with these loans. Moreover, although the record contains financial documentation such as tax returns, pay stubs and banking statements for as recent as March 2014, the record does not contain any information related to the spouse’s salary in her current job, that her employer indicates began in May 2014. As such, it is difficult to assess the spouse’s financial reliance upon the Applicant. Further, although the Applicant claims his spouse’s child will experience financial hardship without him present, the potential financial hardship to the spouse’s child is only relevant to the extent that these hardships affect the spouse. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the Applicant’s spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the Applicant’s child will not be separately considered, except as it may affect his qualifying relative.

With regard to the emotional hardships that the spouse would experience upon separation, the spouse indicates that the Applicant is her anchor and shelter. She further states that her life used to be chaotic and that she felt unprotected before she met the Applicant, as she suffered from sexual abuse

(b)(6)

Matter of I-A-

as a child and from abandonment by the father of her child. The spouse claims that the Applicant protects her and provides the support that she needs. She contends that, although her sister provides her with some support, her sister is married and has five children. While the evidence indicates that the Applicant provides emotional support to the spouse, there is little detail regarding the types and extent of support that the spouse requires or that the Applicant provides, or, consequently, the hardship the Applicant's spouse would experience without the Applicant's emotional support. Therefore, based on the record before us, we are unable to find that separation from the Applicant would result in extreme hardship for the Applicant's spouse.

The spouse states that she will not be able to relocate to Nigeria with her husband because she cannot leave her [REDACTED] year old son behind. She indicates that she has raised her son with little support from his father, and that she now receives no financial support from her son's father. She states that her son currently lives with her sister in [REDACTED] to be closer to the school that he attends, but that she is able to eat dinner with him every night before returning to her home in [REDACTED] New York. The spouse does not indicate whether it is possible for her son to relocate to Nigeria. The Applicant also indicates that his spouse cannot relocate to Nigeria because she would have to leave her sick mother. The spouse states that her mother suffered a heart attack in 2008 and had a chronic heart condition since her heart attack, however the Applicant does not submit documentation to support such assertions regarding the spouse's mother's medical condition. The spouse states that she does not visit her mother often because her mother lives in Alabama. In addition, the record contains country condition materials regarding Nigeria. However, the record is silent regarding how the Applicant's spouse, in particular, could potentially be affected by any adverse country conditions in Nigeria. For example, the Applicant nor his spouse address possible hardships upon relocation or how they relate to the country condition materials provided, e.g. whether the spouse potentially faces safety issues upon relocation or whether she would be unable to find suitable medical care in Nigeria. Further, the Applicant also provides no evidence addressing the extent of any family ties to Nigeria. As such, in this case, the record does not contain sufficient evidence to show that the hardships the spouse would experience upon relocation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The Applicant has not established extreme hardship to his U.S. Citizen spouse as required under section 212(i) of the Act. As the Applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant 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.

Matter of I-A-

ORDER: The appeal is dismissed.

Cite as *Matter of I-A-*, ID# 12338 (AAO Oct. 22, 2015)