



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

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

MATTER OF E-B-O-

DATE: JULY 11, 2016

APPEAL OF LOS ANGELES, CALIFORNIA 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 for fraud or misrepresentation. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to that of a lawful permanent resident must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The USCIS Director, Los Angeles, California Field Office, denied the application. The Director concluded that the Applicant had not established that denial of his waiver application would result in extreme hardship to his U.S. citizen spouse, the only qualifying relative.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and states that the Director erred in finding him inadmissible for fraud or misrepresentation, because he did not willfully misrepresent his marital status when he applied for a non-immigrant visa. In the alternative, he asserts that his U.S. citizen spouse would suffer extreme hardship if his application is denied.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking to adjust status to that of a lawful permanent resident and has been found inadmissible for fraud or misrepresentation, specifically for falsely representing he was married to obtain a nonimmigrant visa to travel to the United States.

Section 212(a)(6)(C)(i) of the Act renders inadmissible any foreign national 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 the Act.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides for a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national.

Decades of case law have contributed to the meaning of extreme hardship. The definition of extreme hardship “is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists “only in cases of great actual and prospective injury.” *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984). An applicant must demonstrate that claimed hardship is realistic and foreseeable. *Id.*; see also *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was “no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent's parents by reason of their alleged physical defects”). The common consequences of removal or refusal of admission, which include “economic detriment . . . [,] loss of current employment, the inability to maintain one’s standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment,” are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); but see *Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* 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 the qualifying relatives would relocate). Nevertheless, all “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). Hardship to the Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

## II. ANALYSIS

On appeal, the Applicant asserts that he is not inadmissible, because he did not willfully misrepresent his marital status on his visa application. He claims that when he submitted the application, he did not know that his divorce had been finalized. The Applicant claims, alternatively, that his spouse would experience extreme hardship if his waiver application is denied, whether she remained in the United States without him or accompanied him to Nigeria.

### A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation, specifically, for procuring admission to the United States after obtaining a non-immigrant visa by falsely representing himself as married.

The Applicant asserts that he is not inadmissible because he did not willfully misrepresent his marital status on his non-immigrant visa application. The Applicant states that when he applied for a non-immigrant visa in Gabon in 2003, he was unaware that the divorce had been granted. He states that he was in Gabon, and not in court, the day his divorce petition was granted in Nigeria. He

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submits a copy of his passport to demonstrate that he was in Gabon on the day his divorce was granted.

For a misrepresentation to be willful, it must be determined that the applicant was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *See generally Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). To be willful, a misrepresentation must be made with knowledge of its falsity. 7 I&N Dec. at 164. To determine whether a misrepresentation was willful, we examine the circumstances as they existed at the time of the misrepresentation, and we “closely scrutinize the factual basis” of a finding of inadmissibility for fraud or misrepresentation because such a finding “perpetually bars an alien from admission.” *Matter of Y-G-*, 20 I&N Dec. 794, 796-97 (BIA 1994); *see also Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998) and *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979).

The U.S. Department of State non-immigrant visa application requires applicants to indicate their marital status. The options are married, single, widowed, divorced, and separated. The Applicant checked “married,” although he states that at the time he was separated from his spouse, and the record establishes that he was divorced.

The Applicant asserts that he did not willfully misrepresent his marital status on his visa application, because he was unaware that he was divorced. He states that he was aware that divorce proceedings had commenced but not that they had concluded. Court records show that the Applicant was in divorce court one week before his divorce was finalized on [REDACTED] 2002. The Applicant signed his non-immigrant visa application on January 22, 2003, two months after he appeared in court.

The Applicant submits a copy of his passport, asserting that it establishes that he was in Gabon on the day his divorce was finalized in Nigeria. The Applicant claims that he was in Gabon between July 2001 and April 2003, during which time his divorce was finalized in Nigeria. Only a few of the date stamps in the Applicant’s passport, as photocopied, are legible. The passport indicates that the Applicant entered and exited Nigeria more than once; however, the stamps do not establish the dates of the Applicant’s residence in Gabon.

The Applicant states that he initiated divorce proceedings in Nigeria but abandoned the process because officials demanded bribes, and that he actually never appeared in court. He states that he went to Gabon and “started living the life of married but separated [*sic*],” and that “Nigerian Protocol” explains why he was named as present on his court documents, including on the date his divorce was finalized. The Applicant does not provide corroborative evidence to support his assertion that he was bribed and that his divorce documents were intentionally falsified to reflect his presence before the court in [REDACTED] 2002. Although the Applicant’s assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). Going on record without supporting documentary

evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *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, we find the Applicant's misrepresentation about his marital status was material, because by claiming to be married, he cut off a line of inquiry, which would have been relevant to his eligibility and which might well have resulted in a proper determination that he was inadmissible. Specifically, had the Applicant truthfully answered that he was separated or divorced, the consular officer may have inquired about his other ties and his intention to return to his country. If the consular officer had known that the Applicant was unmarried, the consular officer may have presumed immigrant intent and not approved the non-immigrant visa application. See *Matter of S- and B-C-*, 9 I&N Dec. 436,448-449 (BIA 1960; AG 1961).

The Applicant has the burden of establishing that he is admissible. He has not met that burden, because he has provided insufficient evidence that he was unaware of his actual marital status when he applied for a non-immigrant visa and, as a result, he has not shown that his misrepresentation of his status was not willful. The Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

#### B. Hardship

The Applicant must demonstrate that refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives, in this case the Applicant's U.S. citizen spouse. The Applicant indicates that his spouse will relocate with him to Nigeria should he depart or be removed from the United States, but the Applicant claims his spouse would experience extreme hardship under either scenario.

The Applicant asserts that his spouse would experience financial, physical, and emotional hardship if his waiver application is denied. The claimed hardship to the Applicant's spouse upon separation consists of emotional and financial hardship. The claimed hardship to the Applicant's spouse upon relocation consists of separation from family in the United States, financial and professional hardship, and physical hardship from inadequate medical care, poor infrastructure, and exposure to violence and terrorism in Nigeria.

In support of the hardship claim, the Applicant submitted the following evidence with his Form I-601: declarations from the Applicant and his spouse, identity and relationship documents, photographs, and financial records. On appeal, the Applicant submits duplicates of his and his spouse's statements, a brief, his 2002 marriage dissolution order, and a copy of his Nigerian passport. We have considered all of the evidence in the record in rendering this decision.

We will first consider whether the Applicant's spouse would suffer extreme hardship if separated from the Applicant. The Applicant's spouse asserts that she would suffer emotional hardship, because she has built her life around the Applicant and he has been supportive. She claims that the Applicant helps her care for her grandson, whose father is in prison, and she cannot care for her

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grandson without the Applicant. The Applicant does not submit evidence to corroborate his spouse's claims that she cannot care for her grandson alone. 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. at 165.

The Applicant asserts that his spouse has health problems and needs his companionship. The record lacks evidence to corroborate his claim that his spouse has medical conditions.

The Applicant also asserts that if they were separated, his spouse would be adversely affected financially, as she would be unable to pay their bills without his support. The record contains copies of the Applicant's and his spouse's tax returns for the years 2012 and 2013. The tax returns indicate that the Applicant's spouse earned most of the family's income during that time. Specifically, it appears she earned \$60,500 in 2013 and \$85,500 in 2012, while the Applicant earned approximately \$15,000 in 2012 and \$8,200 in 2013. The Applicant submitted evidence of their 2014 monthly utility expenses, which totaled approximately \$50. The record lacks evidence of other shared expenses. The evidence shows that the Applicant's spouse earns substantially more than the Applicant. The Applicant, moreover, does not provide evidence to distinguish his financial contributions to their household from his spouse's.

When considering the evidence of emotional, medical, and financial hardship in the aggregate, we find it insufficient to establish that the Applicant's U.S. citizen spouse would suffer extreme hardship upon separation, because the Applicant has not shown that his spouse's hardship would be greater than the common effects of separation.

We next consider whether the Applicant's spouse would suffer extreme hardship if she relocated with him to Nigeria. The Applicant's spouse claims that she cares for her teenage grandchild and expresses concern about his well-being, should she relocate without him. The evidence, however, does not show that the Applicant and his spouse financially provide for her grandchild or that he resides with them. We acknowledge the Applicant's spouse's statement that she would experience emotional hardship if separated from her grandchild.

In her declaration, the Applicant's spouse asserts she would experience medical hardship in Nigeria, because she depends on certain prescription medications to survive and she would lose her health insurance and access to quality health care. The record, however, contains no evidence showing that the Applicant's spouse takes prescription medicine or that her access to health care in Nigeria would be limited.

The Applicant's spouse, who was born in the United States, also asserts that should she relocate, they would live in the Applicant's hometown, where residents speak a local language. She claims that she would be unable to communicate with others and would be treated as an outsider. The Applicant asserts that his hometown, [REDACTED] lacks suitable health facilities, and the power and water supply is poor. The Applicant, however, submits no evidence to support these claims.

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The Applicant's spouse, in addition, states that she fears Ebola and Boko Haram in Nigeria. According to a recent U.S. Department of State travel warning, Boko Haram poses a risk in the northern region of Nigeria. See Department of State Travel Warnings, last updated February 5, 2016, at <https://travel.state.gov/content/passports/en/alertswarnings/nigeria-travel-warning.html>. The Applicant's hometown, [REDACTED] is located in [REDACTED] which is in [REDACTED] Nigeria. The State Department travel warning does not indicate that Boko Haram poses a risk to residents of [REDACTED]. Moreover, the Applicant does not substantiate his spouse's statement concerning her fear of Ebola with country-conditions reports or other evidence. It appears that the World Health Organization declared the end of the Ebola outbreak in Nigeria over a year ago. Press Release, World Health Organization, Nigeria is Now Free of Ebola Virus Transmission (Oct. 20, 2014).

We acknowledge that the quality of life in Nigeria is not the same as that of the United States. However, the Applicant and his spouse do not discuss whether they could relocate to another region in Nigeria, where the standard of living may be higher than in his hometown of [REDACTED] and where English is spoken. The inability to maintain the same standard of living in a foreign country without more, does not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. at 631. Moreover, the Applicant also has not established his spouse has serious medical issues for which no suitable treatment is available in Nigeria.

The evidence in the record, considered both individually and cumulatively, does not establish that the Applicant's spouse would experience extreme hardship. The record does not contain sufficient evidence to establish much of the hardship claimed. It also does not show that her hardship would rise above the common consequences of removal or refusal of admission to the level of extreme hardship. Emotional hardship due to separation is a common result of removal or refusal of admission. The evidence also does not establish that the Applicant's spouse would suffer financially if separated from the Applicant. We recognize that moving to Nigeria would be a significant adjustment for the Applicant's spouse. However, the Applicant submitted no evidence showing that his spouse has medical needs that could not be treated in Nigeria or that she would face harm from Ebola or Boko Haram. Because the Applicant has not established extreme hardship to a qualifying relative, we need not consider whether the Applicant merits a waiver in the exercise of discretion.

### III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. See section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. The evidence is insufficient to establish that the Applicant's spouse would suffer extreme hardship if the application is denied.

**ORDER:** The appeal is dismissed.

Cite as *Matter of E-B-O-*, ID# 16878 (AAO July 11, 2016)