



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

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

MATTER OF I-E-A-

DATE: JULY 19, 2016

MOTION ON ADMINISTRATIVE APPEALS 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 lawful permanent residence 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 District Director, New York, New York, denied the application. The Director concluded that the Applicant was inadmissible for fraud or misrepresentation. The Director further determined that the Applicant had not established extreme hardship to his spouse, his qualifying relative. We dismissed a subsequent appeal.

The matter is now before us on motion. In the motion, the Applicant submits additional evidence and claims that the Director erred in not finding that his spouse's hardship would be extreme.

Upon review, we will sustain the motion because the evidence demonstrates that the Applicant's spouse would suffer extreme hardship if she relocates to Nigeria and that a favorable exercise of discretion is warranted.

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for a fraud or misrepresentation, specifically, for his failure to disclose on his nonimmigrant visa application and in his subsequent admissions into the United States that he had been denied a nonimmigrant visa in 2000.

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), 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 provides for a waiver of this 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

The only issue presented on appeal is whether the Applicant’s spouse would experience extreme hardship if the waiver is denied, whether she remains in the United States without him or accompanies him to Nigeria. The Applicant claims that his spouse would experience extreme hardship in both scenarios. Her claimed hardships in remaining in the United States without him are loss of his income and emotional hardship from separation. Her hardships from relocation are the inability to obtain employment, loss of personal security, and the loss of educational opportunities for her son.

A. Hardship

In this case, the Applicant must demonstrate that denial of the application would result in extreme hardship to his spouse. In support of his hardship claim, he previously submitted student loan records, financial and employment documentation, country condition information, and a statement from his spouse. On motion, he submits student loan documents, school records, utility invoices, wage statements, financial records, employment letters, marriage and birth certificates, supportive statements from himself and his spouse, documentation on Nigeria, and information on his stepson’s high school.

(b)(6)

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Concerning relocation to Nigeria, the Applicant claims that his spouse would suffer emotional, financial, and professional hardship. As to financial and emotional hardship, he and his spouse state that they have no savings to start over in Nigeria and will have to return to the Applicant's rural village in [REDACTED] since he has no connections elsewhere. They further maintain that his village is an unsafe place to live and will have few employment opportunities. The record substantiates their fears about threats to their personal safety and security in Nigeria. The submitted documentation shows that violent crime, including robbery and kidnapping, are significant problems throughout the country. *See* Country Report—Nigeria, U.S. Department of State (DOS), January 21, 2016. DOS reports that the Applicant's rural [REDACTED] where they will settle, is among those areas where U.S. citizens were kidnapped. *See* Nigeria Travel Warning, February 5, 2016. Official reporting establishes that, adding to the country's problems with pervasive violence and ineffective law enforcement, the terrorist Boko Haram group increased its activities in 2015.

In addition to worrying about her own personal safety and financial security in Nigeria, the Applicant's spouse has concerns about the wellbeing of her son and mother. Regarding her son, she states that he is in honors classes in high school in the United States and fears that he will be unable to obtain a quality education in Nigeria. The Applicant submitted a United Nations article on education in Nigeria, which states that schools in rural areas lack basic infrastructure. Regarding her mother, the Applicant's spouse states that she had a chaotic upbringing and two of her six siblings, as well as her father, are deceased, and she visits her remaining brothers and sisters for the holidays in Connecticut, and her mother travels from Alabama for these family gatherings. The Applicant's spouse states that she worries that she will not be able to afford to travel to the United States to visit her mother and siblings. She further states that her mother had two heart attacks and has a pace maker, and she has anxiety that her relocation to Nigeria would upset her mother and affect her medical condition.

The record establishes that the Applicant's spouse is 46 years old and was born and raised in the United States and has never been to Nigeria. She would therefore be unfamiliar with the language, culture, and customs in Nigeria. It also demonstrates that his spouse works as a teacher's assistant and is completing a graduate/doctorate degree program in the United States and that long-term separation from her community, family, and university program will cause her significant hardship. The record further demonstrates that she would suffer considerable hardship in having her family's personal safety at risk in Nigeria. The evidence in the record, considered cumulatively, establishes extreme hardship to the Applicant's spouse if she were to relocate to Nigeria.

B. Discretion

We now consider whether the Applicant merits a waiver of inadmissibility as a matter of discretion. The burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 299 (BIA 1996). We must "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300 (citations omitted). In evaluating whether to favorably exercise discretion,

the factors adverse to the alien 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 the 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 duration in this country (particularly where alien began 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 or service in 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 (citations omitted). We must also consider "[t]he underlying significance of the adverse and favorable factors." *Id.* at 302. For example, we assess the "quality" of relationships to family, and "the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of [removal] proceedings, with knowledge that the alien might be [removed]." *Id.* (citation omitted).

In this case, the favorable factors are the extreme hardships the Applicant's spouse and stepson would face if they were to reside in Nigeria, the Applicant's gainful employment in the United States, and the passage of 14 years since his fraud or willful misrepresentation. The unfavorable factors are the Applicant's fraud or willful misrepresentation in obtaining a nonimmigrant visa and use of the visa to enter the United States. We find that when the favorable factors are considered together, they outweigh the unfavorable factors such that a favorable exercise of discretion is warranted.

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 met that burden. He has demonstrated that his spouse would suffer extreme hardship if she relocates to Nigeria and that a favorable exercise of discretion is warranted. Accordingly, we grant the motion.

ORDER: The motion to reopen is granted and the appeal is sustained.

Cite as *Matter of I-E-A-*, ID# 16525 (AAO July 19, 2016)