identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

tt6

DATE: NOV 01 2011 Office: ACCRA FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

for
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The application will be approved.

The record establishes that the applicant is a native and citizen of Nigeria who entered the United States in 1992 with a nonimmigrant visa and remained beyond the period of authorized stay. She did not depart the United States until December 2005. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions of the Act, until her departure from the United States in 2005. The applicant was thus found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant does not contest this finding of inadmissibility. Rather, she is seeking a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children, born in 1993, 1994, 1997 and 2003.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 14, 2011.

In support of the appeal, the applicant submits the following: a letter from the applicant's spouse, dated April 7, 2011; a letter in support from [redacted] dated April 13, 2011; medical documentation pertaining to the applicant's spouse; letters from three of the applicant's children; a letter from the applicant's child's [redacted], school principal in Nigeria; information about country conditions in Nigeria; and medical and mental health documentation from Nigeria pertaining to the applicant's children, [redacted]. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > . . . .
> >
> > > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
> >
> > . . . .

> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 Attorney General (Secretary) that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien…

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or her four children can be considered only insofar as it results in hardship to a qualifying relative. 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*, 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 U.S. citizen spouse contends that he will suffer hardship were he to relocate to Nigeria to reside with the applicant due to her inadmissibility. To begin, the applicant explains that there are ongoing security risks, including threats of kidnapping, hostage-taking, armed robberies, bombings and terrorist actions, in Nigeria and as an American, he may be targeted. Moreover, the applicant's spouse states that the economy in Nigeria is substandard and he will not be able to support his wife and four children were they all to reside in Nigeria. In addition, the applicant's spouse asserts that he is a bi-vocational minster and his calling is in the United States, not in Nigeria. Finally, the applicant's spouse references the problematic educational and health care system in Nigeria and his concerns for his children's welfare were they to reside in Nigeria permanently. *Letter from* [redacted] dated April 7, 2011.

Based on a totality of the circumstances, and in light of the recent Travel Warning issued by the U.S. Department of State with respect to Nigeria, and in particular, the applicant's home state of Imo[1], the AAO concurs with the field office director that it has been established that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

With respect to remaining in the United States while the applicant resides abroad due to her inadmissibility, the applicant's spouse explains that he needs his wife to return to the United States as long-term separation from her is causing him emotional hardship. He contends that he is lonely

[1] *See Travel Warning-Nigeria, U.S. Department of State,* dated October 13, 2011.

and depressed and his concerns for his wife's safety are causing him to experience stress, fear and anxiety. He further explains that his two older sons reside with him in the United States while his two younger sons reside in Nigeria with their mother and such an arrangement is causing his sons, and by extension, him hardship. He asserts that were his two younger children to return to the United States, he would not be able to work full-time and properly care for them. In addition, the applicant's spouse explains that he earns $21,000 and with the household expenses and the costs of supporting his family in Nigeria, he is experiencing financial hardship. He notes that if his two younger children returned to the United States to reside with him, his financial hardship would be even worse as he would have to pay someone to look after them while he worked extra hours to make ends meet. *Supra* at 1-2.

In support, a letter has been provided from [redacted] confirming that the applicant's spouse is experiencing extreme hardship as a result of having to raise two children by himself without their mother. [redacted] notes that the applicant's spouse is depressed, is having trouble sleeping well at night and his two sons are not doing well in school because of the stress inherent in being separated from their mother and their two youngest siblings. He asserts that one of the applicant's sons, [redacted] is a patient of his and he is working with him in trying to deal with his own anxiety for his mother and younger brothers. [redacted] concludes that the reunification of the family would alleviate the applicant's spouse's financial and emotional stress and anxiety. *Letter from* [redacted] dated March 31, 2011.

[redacted] also provides a letter in support. [redacted] states that although the applicant's spouse is medically fit, he is at risk for medical problems due to his psychological issues, including depression, anxiety, insomnia, fatigue and severe stress, a direct result of his family's separation. *Letter from* [redacted], dated April 11, 2011. Letters have also been provided from the applicant's child's school principal and personal physician in Nigeria explaining that his son is showing levels of emotional disturbance as a result of long-term separation from his father. *Letter from* [redacted] *Principal,* [redacted] dated September 27, 2010 and *Letter from* [redacted], *Medical Director,* [redacted] dated April 4, 2011 Letters have also been provided from three of the applicant's children describing the hardships they are experiencing as a result of their mother's inadmissibility and their own living arrangements, either in Nigeria with their mother or in the United States with their father. Finally, as noted above, the U.S. Department of State has issued a Travel Warning for Nigeria as a result of the problematic country conditions.

Due to the applicant's inadmissibility, the applicant's U.S. citizen spouse has had to assume the role of primary caregiver and provider to two children, while his two younger children remain in Nigeria with their mother, and such an arrangement is causing him emotional and financial hardship. The applicant has established that he needs his wife on a day to day basis, to help with the care of their children and to provide financial and emotional support. A prolonged separation at this time would cause hardship beyond that normally expected of one facing the removal of a spouse.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the

applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether . . . relief is warranted in the exercise of 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 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).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance 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).

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and children would face if the applicant were to remain in Nigeria, regardless of whether they accompanied the applicant or remained in the United States, community ties, gainful employment while in the United States, the apparent lack of a criminal record and the passage of almost 20 years since the commencement of unlawful presence. The unfavorable factors in this matter are the applicant's periods of unlawful presence and unlawful employment in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The application is approved.