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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



H6

DATE: **OCT 05 2011**

Office: ACCRA, GHANA

FILE: 

IN RE: 

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

ON BEHALF OF APPLICANT:



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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen

Thank you

Perry Rhew

Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Nigeria, who attempted to gain an immigration benefit by entering into a marriage for the purpose of evading the immigration laws. He was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to adjust his status through his fraudulent marriage. The applicant was also found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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 and again seeking admission within ten years of his last departure from the United States. The applicant is the fiancée of a United States citizen, and has an approved Petition for Alien Fiancé (Form I-129F). He seeks a waiver of inadmissibility in order to reside in the United States.

The record shows that the applicant was convicted of Marriage Fraud in the United States District Court in Tampa, Florida on May 4, 2005, and was found inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act by the field office director. The applicant has not disputed this finding on appeal. Because the applicant is also inadmissible under section 212(a)(6)(C)(i) and 212(a)(9)(B)(v) of the Act, and demonstrating eligibility for a waiver under section 212(i) and 212(a)(9)(B)(v) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not review the determination of the applicant's inadmissibility under section 212(h).

The District Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in an "extreme hardship" to the qualifying relative and denied the application accordingly. *See Decision of the District Director* dated May 12, 2009.

On appeal, the applicant's attorney provided a brief in support of the applicant's waiver application. In the brief, the applicant's attorney asserts that the qualifying relative is suffering emotionally and financially due to the separation from the applicant. Further, the applicant's attorney contends that the qualifying relative would suffer from loss of financial and education opportunities if she returned to Nigeria to be with the applicant. The applicant's attorney also indicates that the qualifying fiancée has lived in the United States for 11 years and must stay in the United States to care for her mother.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), briefs written on behalf of the applicant, Form I-129F, the qualifying relative's naturalization certificate, statements from the qualifying relative, a fiancée letter of intent, divorce documentation from the applicant's prior marriage, photographs, passports for the qualifying fiancée and applicant, receipts for travel to Ireland, receipts for a calling card, emails sent between the applicant and qualifying fiancée and documentation submitted with the nonimmigrant visa application and the Application to Adjust Status (Form I-485), documentation and materials provided in opposition to a finding of

inadmissibility based upon unlawful presence, a power of attorney contract and a reference letter. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (i) 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.

Section 212(i) of the Act provides, in pertinent part:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

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

(B) 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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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 wife 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*, 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 qualifying relative in this case is his fiancée, who is a United States citizen. The record indicates that the applicant entered the United States as a visitor. The applicant thereafter applied for adjustment of status, which was denied on November 10, 2003. Following his conviction in federal court for Marriage Fraud on May 4, 2005, he was placed in removal proceedings and on June 15, 2005 the immigration judge granted voluntary departure under safeguards until July 15, 2005. The applicant's attorney correctly asserts that the applicant did not accrue unlawful presence during the pendency of his adjustment application. Nonetheless, the applicant accrued unlawful presence from November 10, 2003, the date his adjustment application was denied, until his grant of voluntary departure on June 15, 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of his departure from the United States. The applicant has not disputed his inadmissibility with respect sections 212(i) and 212(h) of the Act. Therefore, the applicant is inadmissible to the United States under sections 212(a)(9)(B)(i)(II), 212(i) and 212(h) of the Act for having been unlawfully present in the United States for a period of more than one year, making material representations to procure an immigration benefit through fraud and having been convicted of a crime involving moral turpitude.

The documentation provided that specifically relates to the qualifying fiancée's hardship includes Form I-601, Form I-290B, briefs written on behalf of the applicant, statements from the qualifying relative, a fiancée letter of intent, receipts for travel to Ireland, receipts for a calling card, emails sent between the applicant and qualifying fiancée and documentation submitted with the nonimmigrant visa application and Form I-485. The entire record was reviewed and considered in rendering a decision on the appeal.

As aforementioned, the applicant's attorney asserts that the qualifying relative is suffering emotionally and financially due to the separation from the applicant. Further, the applicant's attorney contends that the qualifying relative would suffer from loss of financial and education opportunities if she returned to Nigeria to be with the applicant. The applicant's attorney also indicates that the qualifying fiancée has lived in the United States for 11 years and must stay in the United States to care for her mother.

The AAO finds that the applicant has failed to establish that his qualifying fiancée will suffer extreme hardship as a consequence of being separated from him. The applicant's attorney asserts that the qualifying fiancée will encounter emotional hardship as a result of the applicant's inadmissibility. The record contains two statements from the qualifying fiancée. In one of her statements, she indicates that she is having issues with sleeplessness, and she states that the applicant is her "best friend" and "true love." However, the record failed to provide sufficient detail or supporting evidence to demonstrate the types of the emotional hardships that the qualifying fiancée is facing as a result of her separation from the applicant. Going on record without supporting documentary evidence generally 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)). With respect to the financial hardships, the applicant's attorney asserts that the qualifying fiancée is incurring "substantial expenses to keep in contact" with the applicant. The record contains records of calling cards she purchased and also the cost of the applicant and qualifying fiancée's engagement trip. The applicant's attorney indicates the qualifying fiancée's expenses include the trips that she has taken outside of the United States to visit the applicant, and the record contains receipts from their engagement trip to Ireland. However, in the qualifying fiancée's statement, she indicates that the flight to Ireland and the hotel was paid for by the applicant. Nonetheless, the record fails to contain any tax returns or documentary evidence regarding the income of the applicant or qualifying spouse, other than the applicant's attorney's statements that the qualifying fiancée earns 60,000 per year. The applicant also failed to submit the qualifying fiancée's expenses, other than her purchase of calling cards. As such, there is insufficient documentation to demonstrate that the qualifying fiancée will sustain financial hardship as a result of her continued separation from the applicant. Moreover, there was no indication regarding whether the applicant's return to the United States would alleviate the qualifying fiancée's financial burdens. The limited financial documentation, lacking in proof of expenses and income, fails to provide an overall picture of the qualifying fiancée's financial situation. As such, the applicant failed to establish that the qualifying fiancée would have a difficult time supporting herself, or that she will suffer financially, as a result of the waiver being denied.

The applicant also failed to establish that the qualifying fiancée would experience hardship upon relocation to Nigeria. The applicant's attorney indicates that the qualifying fiancée would suffer financially upon relocation and would lose her current employment. However, there was no country condition documentation submitted to demonstrate that she would be unable to find other employment opportunities in Nigeria. Further, there was no evidence provided, other than statements made by the qualifying fiancée and attorney, to confirm her current salary and position in the United States. The applicant's attorney also asserts that the qualifying fiancée has a year and a half more of school remaining and would be unable to complete her education. It has been over two years since that statement was made by the applicant's attorney. Moreover, there was no explanation provided as to whether the qualifying fiancée could finish her masters degree in Nigeria, as she went to high school in Nigeria, lived most of her life there and can presumably speak the language.

The applicant's attorney also contends that the qualifying fiancée cannot relocate to Nigeria because she has to care for her elderly mother. However, other than statements made by the qualifying

fiancée, there was no documentary evidence to support her care for her mother or to explain what such care entails. While the qualifying fiancée indicates that her mother has severe back pain and that a physician advised her mother not to engage in “vigorous activity,” it is unclear if she requires a caretaker. Moreover, the qualifying fiancée stated that she has a brother who lives in Ohio, and there is no explanation as to whether he could care for their mother. The qualifying fiancée also stated that she has two sisters in Nigeria and a brother in London, so it appears she has a support network in Nigeria, should she need any assistance there upon relocation. Moreover, although the qualifying fiancée has been in the United States for over 11 years, she has lived for most of her life in Nigeria, attended high school in Nigeria, and has been back to visit Nigeria, so that it is unlikely she will have issues assimilating into Nigerian culture. As such, the applicant has not met his burden of demonstrating that his qualifying fiancée will suffer extreme hardship in the event that she relocates to Nigeria.

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 AAO therefore finds that the applicant has failed to establish extreme hardship to his qualifying fiancée as required under section 212(a)(9)(B) of the Act. As the applicant has not established extreme hardship to a qualifying family member, it is not necessary to determine whether the applicant merits a waiver as a matter of discretion. However, the AAO notes that the applicant was convicted of entering into a marriage for the purpose of evading immigration laws, which would bar him from approval of a petition for alien relative even if he were granted a K-1 visa. This serious immigration violation and the resulting permanent ineligibility for approval of an immigrant petition are negative factors that would likely render the applicant ineligible for a waiver as a matter of discretion even if extreme hardship to a qualifying relative were established.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.