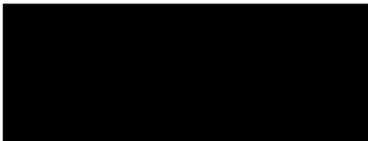


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090
U.S. Citizenship
and Immigration
Services



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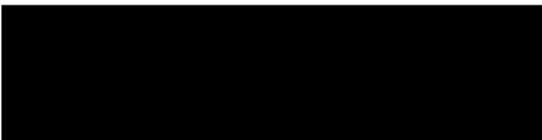


DATE: **FEB 27 2012** OFFICE: ACCRA, GHANA FILE:

IN RE:

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:



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,

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 dismissed.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of departure from the United States. The applicant was also found to be inadmissible under INA § 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), as an individual who has sought through fraud or misrepresentation to procure an immigration benefit under the Act. The applicant seeks a waiver of inadmissibility under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) in order to reside in the United States with his U.S. lawful permanent resident spouse.

In a decision dated October 30, 2009, the Field Office Director concluded that the required standard of proof of extreme hardship to a qualifying relative was not met and that the applicant did not merit a waiver in the exercise of discretion. The applicant's application for a waiver of inadmissibility was denied accordingly. The Field Office Director also found that the applicant's prior marriage was bigamous and that the applicant committed marriage fraud as set forth under INA § 204(c), 8 U.S.C. § 1154(c).

On appeal, counsel for the applicant states that the applicant's prior marriage was not bigamous, and provides documentation in the form of a Decree Nisi and Decree Absolute from the High Court of Justice, Bendel State of Nigeria. Counsel for the applicant also states that the evidence illustrates that the applicant's spouse will suffer extreme hardship if the applicant is not admitted to the United States.

In support of the waiver application, the record includes, but is not limited to a brief by the applicant's counsel, documentation related to the applicant's marriages, a letter from the applicant's child's school, a letter from a friend of the applicant's spouse, a sworn letter from the applicant's spouse, a sworn letter from the applicant, letters from the applicant's children, a letter from the [REDACTED] for 2006, and documentation regarding the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under INA § 212(a)(9)(B)(i)(II) for having been unlawfully present in the United States for one year or more.

Section 212(a)(9) of the Act provides:

(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.

(v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant reports that he initially entered the United States without inspection on October 12, 1990 and remained in the United States until September 12, 2003. Unlawful presence considerations did not begin until the date of enactment of unlawful presence provisions under the Act on April 1, 1997. The applicant had an application for adjustment of status pending from July 25, 1997 to October 1, 2001. As such, the applicant accrued unlawful presence in the United States from April 1, 1997 until July 24, 1997 and again from October 2, 2011 until September 12, 2003. As the period of unlawful presence accrued is over one year, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for a period of 10 years from his departure from the United States. The applicant does not contest this finding of inadmissibility on appeal.

The Field Office Director also found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. Additionally, the Field Office Director stated that the applicant is subject to INA § 204(c), which bars the approval of any petition filed on the applicant's behalf.

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

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.

Section 204(c) of the Act, 8 U.S.C. § 1154(c), states, in pertinent part:

[N]o petition shall be approved if -- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative . . . status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the [Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws[.]

The regulation corresponding to section 204(c) of the Act, at 8 C.F.R. § 204.2(a)(ii), states:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

It does not appear that INA § 204(c) is relevant, as this prohibition does not affect the applicant's ability to obtain an immigrant visa as an individual following to join his U.S. lawful permanent resident spouse. The applicant, however, may be inadmissible under INA § 212(a)(6)(C)(i) of the Act.

The Field Office Director states that the applicant's marriage to a U.S. citizen on April 8, 1999 was bigamous and that the marriage "constituted a material act of fraud or misrepresentation." On appeal, the applicant submitted a Decree Nisi and Decree Absolute from the High Court of Justice of Bendel State, Nigeria to illustrate the dissolution of his first marriage on August 15, 1990, prior to the occurrence of his second marriage. The record indicates that the applicant then obtained an annulment of his second marriage on April 18, 2001 before remarrying his first spouse on July 8, 2003. From this documentation, it does not appear that either of the applicant's marriages was bigamous. Although there is an indication that there may be fraud or misrepresentation on numerous of the applicant's prior applications for immigration benefits, the Field Office Director's decision does not make clear the exact basis for the finding of inadmissibility under INA § 212(a)(6)(C)(i). However, as the applicant is also inadmissible under INA § 212(a)(9)(B)(i)(II), and we find that he has not demonstrated eligibility for waiver of that inadmissibility, we need not resolve the issue of 212(a)(6)(C)(i) inadmissibility at this time.

The applicant is eligible to apply for a waiver of this ground of inadmissibility under INA § 212(a)(9)(B)(v), as the spouse of a lawful permanent resident of the United States. In order to qualify for this waiver, however, he must prove that the refusal of his admission to the United States would result in extreme hardship to his spouse.

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 deportation, 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, 885 (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.*

We observe that 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., In re 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).

All hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

The applicant's qualifying relative in this case is his U.S. lawful permanent resident spouse. The AAO notes that only hardship to the applicant's spouse can be taken into account in the determination of extreme hardship. Although the applicant has four U.S. citizen children, two sets of twins, it is noted that Congress did not include hardship to the applicant's children as a factor to be considered in assessing extreme hardship in cases under INA § 212(a)(9)(B)(v) for waivers of unlawful presence. Hardship to the applicant or to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

On appeal, counsel for the applicant asserts that the applicant's U.S. lawful permanent resident spouse will suffer extreme hardship if he is not admitted to the United States. We will first consider the hardship claimed to the applicant's spouse if she were to remain in the United States without the applicant. The primary hardship claimed is financial hardship and hardship due to the demands of raising four children in the United States without their father present. Counsel for the applicant states that the applicant's children are suffering as they are not able to benefit from the parent-child relationship with their father, and as a result have disciplinary problems at home and at school. Although the record contains heartfelt letters from the applicant's U.S. citizen children, hardship to the applicant's children, cannot be considered in the determination of whether the applicant meets the standard required under INA § 212(a)(9)(B)(v), unless it is shown how hardship to the children affects the qualifying relative – the applicant's spouse. No evidence has been provided to illustrate what hardship the applicant's spouse has suffered due to disciplinary problems with her children. A letter is provided from one of the children's schools dated December 14, 2009, stating that due to a violation of the code of conduct of the school, the child would need to report for morning detention on one occasion. This is the only evidence provided of disciplinary problems with the children. It is also noted that two of the applicant's children are 16 years old and the other two children are 20 years old. It is not possible to make a determination from one instance of disciplinary action taken against one of the applicant's children, that the applicant's spouse is suffering hardship due to separation from the applicant.

The applicant provides letters from himself, his spouse, his spouse's friend, and his spouse's pastor in support of the emotional, physical, and medical hardship that the applicant's spouse suffers due to the separation from the applicant. The letter from the applicant's spouse's friend dated December 19, 1999 indicates that the applicant's spouse is experiencing stress as a result of raising her children without the applicant. The letter states that the applicant's spouse is also suffering from elevated blood pressure and chest pains, but no evidence is provided of those medical complaints from a medical professional. The applicant's friend claims to be a physician's assistant who has treated the applicant for "weight gain, elevated blood pressure, and chest pains," but no evidence is provided in regards to the applicant's friend's credentials, no details are provided as to when the applicant suffered from the stated conditions, and no documentation is provided as to the treatment of those conditions. The letter from the applicant's spouse's pastor dated June 10, 2008 states that the applicant's spouse has suffered from "a lot of pressure and

tremendous hardship” as a result of raising four children on her own. Yet, no details are provided as to the type of hardship experienced by the applicant’s spouse and the effect that the hardship has on her ability to care for herself and her children. The applicant’s spouse in her sworn letter dated June 17, 2008 states that she is suffering from hardship due to the separation from the applicant, but the applicant’s spouse does not provide specific details of the hardship. She states that she faces personal risk and insecurity when visiting her husband in Nigeria, but she did not provide evidence of any trips to Nigeria or problems that she has experienced there. From the documentation provided, it is not possible to determine the degree of hardship that the applicant’s spouse is experiencing or whether the stress or medical conditions that the applicant’s spouse is experiencing are due to separation from the applicant.

The applicant’s spouse also claims financial hardship due to separation from the applicant. The record indicates that the applicant’s spouse is a registered nurse, but no evidence is provided of her current income or expenses. Applicant’s counsel claims that the applicant’s spouse owns a home in the United States and relies on investment in her 401k plan for her future financial needs. No evidence is provided, however, of her home ownership or her investments. Statements by counsel in the respondent's brief are not evidence and are not entitled to any evidentiary weight. *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 505 (BIA 1980). The letter provided from the applicant’s spouse’s friend states that the applicant’s spouse is challenged financially because she is the only provider for her four children, two of which are in college. No evidence is provided, however, of the expenses incurred for the children’s education, such as tuition bills and school transcripts. The applicant’s spouse also claims hardship due to the need to support her husband financially in Nigeria and due to the costs incurred from visiting her husband in Nigeria. The applicant, however, has not provided any documentary evidence, such as wire transfers or bank statements, illustrating that he receives financial support from his wife. Moreover, no evidence is provided of the applicant’s spouse’s costs incurred due to travel to Nigeria. It is not possible from the evidence provided to determine the degree of financial hardship to the applicant’s spouse.

As to whether the applicant’s spouse would suffer extreme hardship if she were to relocate to Nigeria to reside with the applicant, the AAO takes note of the current country conditions in Nigeria in addition to the information provided in U.S. Department of State report included in the record. The applicant has not indicated, however, how those conditions would affect his wife specifically. The general economic conditions and high rate of unemployment in the country do not prove in the instant case that the applicant’s spouse would be unable to obtain employment in Nigeria. No information is provided as to the need for nurses in Nigeria, the salary earned by nurses in Nigeria, or whether other employment would be available to the applicant’s spouse. Additionally, because no evidence is provided as to the applicant’s spouse’s financial situation in the United States, such as savings or assets, it is not possible to determine if she would suffer financial hardship if she were to be unemployed in Nigeria. Again, statements of counsel are not evidence and the AAO will analyze the hardship in this case based on the documentary evidence of record, and not on the statements of counsel. *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 504. Although there is currently a reported high level of violence and unrest in Nigeria, the applicant has not shown that he has been affected by this violence or that his family would be specifically affected by conditions there. The applicant’s spouse is a native and citizen of Nigeria and the

applicant has not provided any evidence regarding his spouse's family ties in Nigeria or her inability to adapt culturally to life in Nigeria. Accordingly, the record does not show that relocation to Nigeria would cause extreme hardship to the applicant's spouse. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66.

Considered in the aggregate, the hardship to the applicant's spouse does not rise to the level of extreme beyond the common results of removal. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez*, 96 F.3d at 392 (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Matter of Pilch*, 21 I&N Dec. at 631. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative under required under s INA § 212(a)(9)(B)(v). Having found the applicant ineligible for relief under section INA § 212(a)(9)(B)(v), no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section INA § 212(a)(9)(B)(v), the burden of proving eligibility remains entirely with the applicant. 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.