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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

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Date: **MAY 04 2012**

Office: ACCRA, GHANA

FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B); Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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.

Thank you,

for  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application and application for permission to reapply for admission were denied by the Field Office Director, Accra, Ghana, and are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the applications will be approved.

The record reflects that the applicant, a native and citizen of Nigeria, entered the United States on September 12, 1992 with a B1/B2 visitor visa, with authorization to remain until March 11, 1993. The applicant remained in the United States and was placed in deportation proceedings, and on October 25, 1994, an immigration judge granted the applicant voluntary departure until January 25, 1995. However, the applicant did not depart the United States. On October 24, 2006, the applicant was removed to Nigeria. The applicant was thus 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. The applicant does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to reside in the United States with his U.S. citizen spouse. The applicant further seeks permission to reapply for admission after removal pursuant to section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States with his spouse.

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 Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated October 30, 2009. The field office director's decision included a denial of the Application for Permission to Reapply for Admission into the United States (Form I-212).

The record contains: a memorandum in support of appeal filed by the applicant's attorney; a letter in support of the waiver application filed by the applicant's attorney; an affidavit from the applicant's spouse; medical documentation for the applicant's spouse; financial documentation; letters of reference; and additional documentation in support of the applicant's waiver and appeal. 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...

The applicant's qualifying relative in this case is his wife, a U.S. citizen living in Brooklyn Park, Minnesota. 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be "qualifying relatives." However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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-Morales*, 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.

Counsel asserts that the applicant’s spouse is suffering emotional and psychological hardship as a result of her separation from the applicant. Counsel contends that the applicant’s spouse receives ongoing care and medication for serious mental health problems that she suffers as a result of numerous factors associated with the absence of the applicant. See *Memorandum in Support of Appeal*, dated December 10, 2009. In support of this contention, the applicant submitted a letter from a Physician Assistant-Certified, stating that the PA-C has been treating the applicant’s spouse for anxiety, depression, and insomnia, and that her separation from the applicant is exacerbating her mental health symptoms. See *Letter of* [REDACTED] dated November 19, 2009. The record also contains medical documentation from the North Memorial Medical Center and from the North Clinic in Minnesota, verifying that the applicant’s spouse is being treated for anxiety and depression. The record also includes evidence of the medications that the applicant’s spouse has been prescribed to treat her mental health problems.

Counsel further contends that the applicant’s spouse will suffer financial hardship if the applicant’s waiver is denied. Counsel states that the applicant’s spouse was unable to pay the mortgage on the home that she and the applicant owned, and the house went into foreclosure. Counsel states that,

following the foreclosure, the applicant's spouse lived with an aunt for a while, and now rents an apartment, which required her to find a guarantor to sign the rental agreement. *See Brief in Support of Appeal*, dated December 10, 2009. The record includes a record of foreclosure on the applicant's spouse's home, and a copy of the applicant's spouse's apartment rental agreement, showing that the applicant's spouse was required to have a guarantor for the lease.

The applicant's spouse has been separated from the applicant since his removal in 2006. In addition, due to the financial constraints on the applicant's spouse, the applicant and his spouse decided to send their children to Nigeria to be with the applicant. This included two U.S. Citizen children of the applicant from a previous marriage, and two U.S. Citizen children of the applicant's spouse from a previous relationship.<sup>1</sup> As noted above, children are not qualifying relatives under section 212(a)(9)(B)(v) of the Act, but USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. According to an affidavit filed by the applicant's spouse, since her children started living in Nigeria, they have encountered serious health problems, including malaria and typhoid fever. Medical documentation in the record shows that the applicant's spouse has been treated at a medical clinic for anxiety, depression, and insomnia, and that these records indicate that there is a connection between the emotional state of the applicant's spouse and the absence of the applicant and her children.

The record reflects that the cumulative effect of the emotional, psychological, and financial hardships that the applicant's spouse is experiencing due to her husband's inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant's spouse to remain in the United States without the applicant due to his inadmissibility, the applicant's spouse would suffer extreme hardship.

The record further indicates that the applicant's spouse would experience extreme hardship were she to relocate to Nigeria with the applicant. The record indicates that the applicant's spouse has resided in the United States for more than 10 years and became a U.S. Citizen in 2007. The applicant's spouse has strong family and community ties to the United States. According to a statement by the applicant's spouse, she has extended family in the United States, including two siblings residing in Minnesota. The record includes letters of reference from family and friends of the applicant and his spouse, attesting to the applicant's spouse's contributions to the community. In addition, the applicant's spouse states that she will be unable to obtain the medical treatment that she needs were she to reside in Nigeria. In support of this contention, the applicant has submitted country conditions information on Nigeria, including a report on Health Information to Travelers to Nigeria by the Centers for Disease Control and Prevention (CDC). The hardship that would result from relocation to Nigeria, considering the applicant's spouse's community ties and medical concerns, in the aggregate, would be beyond the common results of removal or inadmissibility and rise to the level of extreme hardship for the applicant's spouse.

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<sup>1</sup> Counsel states that USCIS failed to acknowledge the child born of the relationship of the applicant and his spouse, but the AAO notes that both of the children of the applicant's spouse are from previous relationships.

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 she 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, "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).

The favorable factors in this matter are the extreme hardships the applicant's U.S. citizen spouse and U.S. Citizen children would face if the applicant were to reside in Nigeria, regardless of whether they accompanied the applicant or remained in the United States; the fact that the applicant resided in the United States for more than 10 years; the applicant's apparent lack of a criminal record; and strong letters of reference from the applicant's family and friends. The unfavorable factors in this matter are the applicant's overstaying his visa and his unlawful presence while 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.

The AAO notes that the field office director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-

212) in the same decision. The Form I-212 was denied solely based on the denial of the Form I-601. As the AAO has now found the applicant eligible for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, it will withdraw the field office director's decision on the Form I-212 and render a new decision.

Section 212(a)(9)(A) of the Act states:

Aliens previously removed.-

(A) Certain aliens previously removed.-

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

On October 24, 2006, the applicant was removed from the United States. As such, he is inadmissible under section 212(a)(9)(A) of the Act and must request permission to reapply for admission.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. The AAO has found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated in that finding, the AAO finds that the applicant's Form I-212 should also be granted as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility and permission to reapply for admission, 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 applications approved.

**ORDER:** The appeal is sustained. The applications are approved.