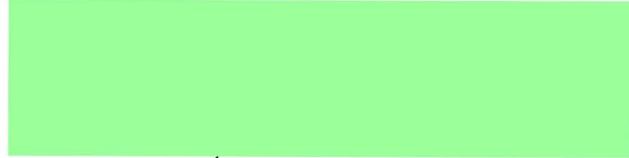


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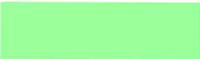
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090

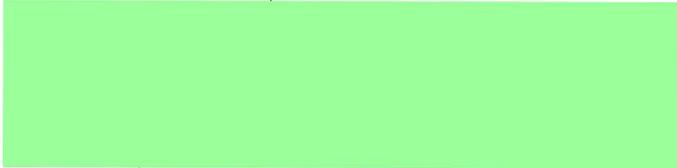


U.S. Citizenship
and Immigration
Services

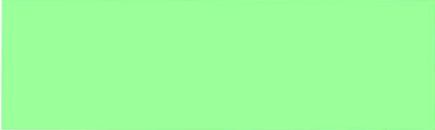


DATE **APR 03 2013** OFFICE: CHICAGO

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native of Nigeria and citizen of Nigeria and Canada who was found to be inadmissible to the United States under 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 country for more than one year and seeking readmission within ten years of her departure from the United States. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to live in the United States with her U.S. citizen spouse and children.

The director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated March 19, 2012.

On appeal, counsel asserts that the director erred in her decision and that the applicant demonstrated extreme hardship to her qualifying relative. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), dated April 16, 2012.

The record contains, but is not limited to: Form I-290B; Form I-601; counsel's letter; Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485); Form I-130; a psychological evaluation; statements by the applicant's spouse, children, a pastor and neighbor; financial documents; medical records; naturalization, birth, marriage and divorce documents; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(i) [A]ny 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.

The director's decision states that the applicant entered the United States pursuant to a visitor visa in 2001 and departed in 2003, thus accruing unlawful presence for more than one year under section 212(a)(9)(B)(i)(II) of the Act. Counsel does not contest the applicant's inadmissibility.

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

Waiver.-The [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 [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 first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant and her children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only 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-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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or U.S. 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).

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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 record contains references to hardship the applicant’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. Counsel asserts on Form I-290B that the applicant’s children are qualifying relatives. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant’s children will not be separately considered, except as it may affect the applicant’s spouse.

The applicant’s spouse and children indicate that their family “radiates around” the applicant and they will be “broken into pieces” without her. They state and medical documents show that the applicant gave birth on April 2012 to a boy who has spina bifida, underwent two surgeries and remained hospitalized. According to a letter from the hospital, both parents are needed during the “critical period” of hospitalization, and “extensive follow-up” appointments are necessary after the baby is discharged.

A psychological assessment indicates that the applicant, her spouse, and their four minor children began to live together as a family for the first time in December 2010. The psychologist notes that they have a strong family unit where the applicant maintains the household, and the applicant’s spouse works outside the home and financially provides for their family. The psychologist who

twice interviewed the applicant's spouse diagnosed him with major depressive disorder, severe, due to his mental and emotional stress caused by considering his possible separation from the applicant. Through the psychologist, the applicant's spouse indicates that he depends on the applicant for emotional support, comfort, care for the children and creating a home. He worries that he cannot financially afford to support two households, one in the United States and one abroad if the applicant were not granted the waiver. Financial documents of the applicant's spouse's income, bank account and expenses corroborate these assertions. Through the psychologist, the applicant's spouse states that the children would likely move with the applicant if she is not granted a waiver. The psychologist asserts that the applicant's spouse's inability to provide for their children emotionally, psychologically, spiritually and financially will cause him emotional hardship. The psychologist states and medical documents corroborate that the applicant's spouse suffers from uncontrollable hypertension and once was hospitalized because of chest pain. The psychologist found that the applicant's spouse has fleeting suicidal thoughts, poor coping skills and reverts to drinking alcohol, self-medicating, and isolation. Although he has been referred to counseling, the applicant's spouse has not complied due to social stigma and repercussions if he were to run for public office.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse, including the strain of being separated from the applicant and his children, his current fragile psychological state, his loss of the applicant's help in maintaining their household, and his inability to afford the applicant's household abroad and his own. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship as a consequence of being separated from the applicant.

Counsel asserts that the applicant's spouse could not relocate to Nigeria or Canada because he is well settled in the United States. The psychologist notes that most of the applicant's spouse's family lives in Nigeria. Although counsel contends that the applicant's relocation to Nigeria would be dangerous and submits country-condition reports as evidence, neither counsel nor the applicant describe the applicant's spouse's hardship upon relocating to Nigeria or Canada; there is no indication, moreover, that the reports submitted address specific difficulties the applicant's spouse may experience in Nigeria.

The psychologist indicates that the applicant's spouse has lived in the United States since 1997, has worked at [REDACTED] as a systems engineer for the last thirteen years and volunteers at his church as the vice chairman of the parochial committee and head of the information and technology department. No other evidence or assertions were submitted to describe the applicant's spouse's ties to the United States or his hardship based on relocation to Nigeria or Canada.

The AAO has considered cumulatively all evidence of relocation-related hardship to the applicant's spouse, including his length of residence in the United States, his potential loss of employment, and his community ties through his church. The AAO finds that the evidence is not sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship as a consequence of relocating to live with the applicant in Nigeria or Canada.

The AAO can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, the AAO cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, 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. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.