



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 21035905

Date: MAR. 03, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for fraud or willful misrepresentation of a material fact.

The Director of the Philadelphia, Pennsylvania Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant did not establish, as required, that her U.S. citizen spouse would experience extreme hardship if the waiver is not granted and she must depart the United States. We dismissed the Applicant's subsequent appeal of that decision on the same grounds. The matter is now before us on a motion to reopen.

On motion, the Applicant asserts that she is submitting new evidence in support of her claim that her spouse would experience extreme hardship upon relocation with her to Nigeria. Upon review, we will dismiss the motion to reopen.

I. LAW

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

Any noncitizen 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 the Act, is inadmissible. Section 212(a)(6)(C)(i) of the Act. To establish eligibility for a discretionary waiver of this inadmissibility ground, the noncitizen must first demonstrate that denial of admission will result in extreme hardship to his or her U.S. citizen or lawful permanent resident spouse or parent. Section 212(i) of the Act.

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). We recognize that some degree of hardship to qualifying relatives is present in most cases; however, to be considered "extreme," the hardship must exceed that which is usual or

expected. *See Matter of Pilch*, 21 I&N Dec. 627, 630-31 (BIA 1996) (finding that factors such as economic detriment, severing family and community ties, loss of current employment, and cultural readjustment were the “common result of deportation” and did not alone constitute extreme hardship). In determining whether extreme hardship exists, individual hardship factors that may not rise to the level of extreme must also be considered in the aggregate. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

In these proceedings, it is the Applicant’s burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The issue on motion is whether the Applicant has submitted new facts in support of her motion to reopen establishing that her U.S. citizen spouse would experience extreme hardship upon relocation to Nigeria.¹ As discussed in our prior decision, the Applicant does not contest that she is inadmissible for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act.

In determining that the Applicant did not meet her burden to establish that her spouse would experience extreme hardship upon relocation, we considered evidence that included personal declarations from the Applicant and her spouse, a biopsychosocial assessment of her spouse prepared by a family therapist, financial and employment documentation, and information describing country conditions in Nigeria, including reports on its medical and healthcare infrastructure. We concluded that while the Applicant demonstrated that her spouse would likely experience financial, psychological, and emotional difficulties upon relocation to Nigeria, the evidence did not establish that there are any specific threats to his safety and security, mental or physical health, or financial circumstances that, when considered in the aggregate, would rise to the level of extreme hardship.

In support of her motion to reopen, the Applicant asserts that she has new facts and evidence establishing extreme hardship upon relocation, stating that such facts were “not available or pleaded sufficiently” on appeal.

With respect to the Applicant’s assertion that her spouse would experience economic detriment upon relocation, we considered evidence that both the Applicant and her spouse are currently employed in the United States, as a seafood specialist and home healthcare worker, respectively. We observed that the Applicant did not submit evidence in support of her claim that they would be unlikely to find work in Nigeria based on their skills and prior work history. On motion, the applicant asserts that “Nigeria is a ‘Third World Country’ with no comparable jobs,” emphasizes that many Nigerians are relocating due to the lack of employment opportunities, and states that it is unlikely that the Applicant is going to find a job with earnings comparable to what he earns in the United States. While it may be true that the Applicant would be unlikely to match his U.S. earnings in the Nigerian economy for the same or

¹ An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant, and 2) if the qualifying relative relocates overseas with the applicant. Demonstrating extreme hardship under both of these scenarios is not required if an applicant’s evidence establishes that one of these scenarios would result from the denial of the waiver application. Here, we determined that the Applicant’s evidence establishes that her spouse intends to relocate with her to Nigeria if she is not granted the waiver of inadmissibility.

similar type of work, the record on motion does not include any new supporting evidence of employment and economic conditions in Nigeria in support of her claim that it would be difficult for either of them to secure any employment in Nigeria or to earn sufficient income to support themselves in a country with a significantly lower cost of living compared to the United States.

In dismissing the Applicant's appeal, we acknowledged that she submitted country conditions documentation for Nigeria but determined that the evidence did not establish that someone in her spouse's situation would face financial, medical, or other difficulties or specific threats to their physical safety and security. We observed that the record did not demonstrate where the Applicant and her spouse would be likely to live in Nigeria upon relocation, which made it impossible to assess local conditions. On motion, counsel states in the submitted brief that the Applicant has indicated to him her intent to relocate to one of Nigeria's northern states [] or [], rather than returning to [] where she resided prior to coming to the United States in 2017. Counsel states that she "intends to start a new life elsewhere in Nigeria," where no one would know her or judge her for being deported from the United States. Counsel further states that the Applicant has no family in [] or [] which would make relocation to that region even more difficult for her spouse. The Applicant submits an updated U.S. Department of State Travel Advisory for Nigeria, which identifies the states of [] and [] as regions to which U.S. citizens are advised not to travel.

The record does not contain a supporting statement from the Applicant or her spouse indicating an intent to relocate to the states of [] or [] or their reasons for choosing these locations over her home city of [] or any other location in Nigeria which is not under a "do not travel" advisory from the U.S. government.² Counsel's statement alone is not sufficient to establish the Applicant's intent to move to a specific region of Nigeria. Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

The Applicant's brief in support of the motion also addresses the medical and psychological hardships her spouse would face upon relocation, asserting that he would be a danger to himself and his community if he does not receive proper mental health and medical attention. The Applicant submits an additional article, dated in 2011, about the state of Nigeria's healthcare system, but we evaluated similar evidence in adjudicating the appeal. The Petitioner has not submitted any new facts regarding her spouse's condition in support of the assertion that he would "probably become one of the people on the street who walk around naked and mentally deranged." In dismissing the appeal, we considered a biopsychosocial assessment of the Applicant's spouse prepared by a family therapist who had evaluated him over two sessions, indicated he exhibited symptoms of post-traumatic stress and major depressive disorder and recommended that he be evaluated for medication and receive psychotherapy. The therapist stated that the purpose of her assessment was to describe "the likely psychosocial consequences for [the spouse] if [the Applicant] is not allowed to remain with him in the United States." The assessment did not examine the potential emotional or psychological consequences the Applicant's spouse would face upon relocation, and we observed that the evidence did not establish that the spouse's mental health conditions affect his ability to work or engage in other activities. While

² The record reflects that prior to coming to the United States, the Applicant worked as a sales coordinator for a company based in [] Nigeria for a period of 13 years.

the Applicant now claims that relocation would lead to devastating consequences for her spouse's health, particularly his mental health, the record does not contain any new evidence in support of that claim.

Overall, the new evidence does not establish that the Applicant's spouse would experience extreme hardship upon relocation to Nigeria or demonstrate the Applicant's statutory eligibility for a waiver of inadmissibility under section 212(i) of the Act. Accordingly, she has not submitted new evidence that would warrant reopening the appeal. The Applicant's waiver application remains denied.

ORDER: The motion to reopen is dismissed.