



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

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

In Re: 18050061

Date: DEC. 02, 2021

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility under 212(i) Immigration and Nationality Act (the Act) 8 U.S.C. § 1182(i), for fraud or willful misrepresentation.

The Director of the Chicago, Illinois Field Office denied the application, concluding the Applicant did not establish that her U.S. citizen spouse, the only qualifying relative, would suffer extreme hardship upon her separation or his relocation to Nigeria. The Applicant later filed an appeal that we dismissed. The matter is before us again on a motion to reopen and a motion to reconsider.

On motion, the Applicant contends we erred in determining that her qualifying spouse would not experience extreme hardship upon her separation. The Applicant asserts that three of the five significant factors related to demonstrating extreme hardship listed in a United States Citizenship and Immigration Service (USCIS) Policy Memorandum are present this matter, including her qualifying spouse's disability, a U.S. Department of State (DOS) travel warning for Nigeria, and the potential separation of his one-year-old child away from the Applicant, his mother and primary caregiver. *See 9 USCIS Policy Manual B.4(B)*, <https://www.uscis.gov/policymanual> (providing, as guidance, the scenarios to consider in making extreme hardship determinations). In support of these contentions, the Applicant submits additional evidence, including a new affidavit from her qualifying spouse and a letter from his physician.

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).

On motion, the Applicant more specifically contends that her qualifying spouse would experience extreme hardship if she were separated from her spouse to Nigeria. As noted, the Applicant provides an additional letter from the qualifying spouse's physician discussing the medical hardship he would face in the event of her separation and an affidavit from the qualifying spouse discussing the significant disruption of the care of his one-year-old son if his spouse separated. With these additional assertions and evidence, we conclude that the evidence now demonstrates that it is more likely than not that the qualifying spouse would experience extreme hardship upon separation from the Applicant.

The Applicant points to the country conditions in Nigeria and asserts that she would face substantial risks in that country, resulting in extreme hardship to her qualifying spouse. For instance, the DOS travel warning for Nigeria states the following:

Violent crime – such as armed robbery, assault, carjacking, kidnapping, hostage taking, banditry, and rape – is common *throughout the country*. Kidnappings for ransom occur frequently, often targeting dual national citizens who have returned to Nigeria for a visit, as well as U.S. citizens with perceived wealth. Kidnapping gangs have also stopped victims on interstate roads.

Nigeria Travel Advisory, U.S. Department of State, Bureau of Consular Affairs, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/nigeria-travel-advisory.html> (last visited Dec. 2, 2021) (emphasis added).

The risks the Applicant would face if separated to Nigeria, the level of stress this would cause the qualifying spouse, and the resulting potential impact on his medical condition rise above typical hardships faced by spouses in being separated. As indicated in the DOS travel warning, the Applicant would face an extreme risk of violence, kidnapping, and other similar risks in Nigeria. This would cause substantial stress to the qualifying spouse and his medical problems leave him particularly susceptible to such stress. For instance, on motion, the Applicant submits a letter from the qualifying spouse's physician indicating that he has a history of hypertension, hypocholesterolemia, among other physical ailments affecting his mobility. The qualifying spouse's physician further notes that the "emotional distress...caused by [the Applicant] leaving the country will lead to uncontrolled hypertension that can result in stroke or myocardial infraction." The record also reflects that the qualifying spouse was 66 years old as of the date the application and his physician states that he "needs the help of his wife in caring for his medical conditions...and controlling his blood pressure."

In addition, the Applicant and the qualifying spouse had a one-year-old child as of the date of the application. The qualifying spouse asserts in an affidavit submitted on motion that his son would not be able to relocate with his mother to Nigeria given the risks they would face there, specifically, the lack of physical safety, acceptable living conditions, and education. As a result, the qualifying spouse states that his son would lose his primary caretaker, his mother, upon her separation. The qualifying spouse also states that he is retired and would have to return to work as a cab driver, and that he would not be able to provide primary care to his son, afford fulltime daycare if his spouse was separated, and support his wife in Nigeria. The spouse also explains how the loss of the primary caregiver for his

son would be emotionally difficult for him, further exacerbating his medical problems and leaving him under substantial risk of heart attack or stroke.

In sum, the new evidence submitted on motion reflects that the Applicant's separation from the qualifying spouse would result in the displacement of care of their one-year-old child from her, a healthy 44-year-old woman who is the child's primary caretaker, to the qualifying spouse, a 66-year-old retired man with significant health problems and limited ability to act as a single parent and income earner for his child and spouse in Nigeria. We conclude that this additional emotional, psychological, and economic stress for the qualifying spouse exceeds the level of hardship that ordinarily results from family separation.

As a result of the new hardship evidence submitted on motion, we conclude that the Applicant has sufficiently established that her qualifying spouse would likely experience extreme hardship upon separation from the Applicant. Therefore, we will remand the matter for a discretionary determination by the Director, making sure to include any extreme hardship finding as a significant positive discretionary factor.

ORDER: The motion to reopen is granted, and the matter is remanded to the Director for the entry of a new decision consistent with the foregoing analysis.