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

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[redacted]

FILE: [redacted] Office: ACCRA, GHANA Date: MAY 0 5 2009

LGS 200 481 4028

IN RE: [redacted]

APPLICATION: Application for Waiver of Ground of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Ellen C. Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer in Charge, Accra, Ghana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 35-year-old native and citizen of Nigeria who was found to be inadmissible to the Untied States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission to the United State through fraud or misrepresentation. The applicant is married to a U.S. citizen, and is the beneficiary of an approved Petition for Alien Relative. The couple's daughter is a lawful permanent resident of the United States who resides with the applicant in Nigeria. The applicant seeks a waiver of inadmissibility under section 212(i) of the Act in order to reside in the United States with her husband.

The Acting Officer in Charge concluded that the applicant failed to establish extreme hardship to a qualifying relative, and denied the application. *See Decision of the Acting Officer in Charge*, dated Apr. 8, 2006. It also appears that the Acting Officer in Charge determined that the applicant would not warrant a favorable exercise of discretion because her misrepresentation demonstrated "bad character." *See id.*

The applicant asserts three grounds for her appeal. First, the applicant contends that she did not engage in a willful misrepresentation of a material fact. *See Brief in Support of Appeal.* Second, the applicant asserts that her husband would suffer extreme hardship if she were denied a waiver. *See id.* Third, the applicant objects to the Acting Officer in Charge's factual findings and his discretionary determination that her actions reflect "bad character." *See id.*

In support of the appeal, the applicant submitted a brief, an affidavit and letter from her husband, the couple's marriage certificate, a birth certificate and lawful permanent resident card for the couple's daughter, copies of the daughter's passport, and documents reflecting numerous monetary transfers from the applicant's husband in New York to the applicant in Nigeria. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

> Misrepresentation
>
> (i) 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.

The record reflects that the applicant and her husband, [redacted], were married on February 8, 2003, in Lagos, Nigeria. *See Marriage Certificate; Form I-130 Petition for Alien Relative.* Mr. [redacted] filed a Petition for Alien Relative on behalf of the applicant on May 7, 2003, which was subsequently approved. *See Form I-130 Petition for Alien Relative.* In or around June,

2003, the applicant applied for a non-immigrant visa with the United States Embassy in Lagos. *See Brief in Support of Appeal.* The applicant was informed that her husband had already filed a Petition for Alien Relative, and her non-immigrant visa application was "not treated." *Id.* On November 4, 2003, the applicant claims that she applied for a non-immigrant visa, using her "old passport which bore a combination of [her] family name different from the one already submitted to the Embassy by [her] husband." *Id.* The applicant states that this application was "refused." *Id.* On June 14, 2005, the applicant attended an interview at the United States Embassy on her immigrant visa. *Id.* During this interview, the applicant voluntarily "informed the interviewer that [she] had previously applied in desperation using another passport." *Id.* The visa petition was denied. *Id.*

A timely retraction of a misrepresentation can serve as a defense to inadmissibility under section 212(a)(6)(C)(i) of the Act. *See Matter of R-R-*, 3 I&N Dec. 823 (BIA 1949); *Matter of M-*, 9 I&N Dec. 118 (BIA 1960). For the retraction to be effective, it must be done "voluntarily and without prior exposure of [the] false testimony." *Matter of R-R-*, 3 I&N Dec. at 827; *see also Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973) (holding that recantation of false testimony one year after the event, and only after it became apparent that the disclosure of the falsity of the statements was imminent, was not voluntary or timely).

To the extent that the applicant contends that she is not covered under section 212(a)(6)(C) of the Act because of the information she volunteered during her visa interview on June 14, 2005, the evidence in the record is insufficient to meet her burden of proof to show a timely retraction. *See* section 298 of the Act, 8 U.S.C. § 1361 (stating that the applicant bears the burden of proof to show that she is not inadmissible). Specifically, there is insufficient information regarding the applicant's visa interview on June 14, 2005, and whether the applicant volunteered the information only after it became apparent that the disclosure of the previous misrepresentation was imminent. *See Matter of Naimo*, 14 I&N Dec. at 414. Additionally, the record does not contain evidence regarding the proceedings on November 4, 2003, and whether the applicant had an opportunity to recant the misrepresentation at that time. *See id.* Accordingly, the doctrine of timely retraction does not appear to be applicable to this case.

The applicant contends that her use of an old passport to apply for the non-immigrant visa did not constitute a willful misrepresentation of a material fact. *See Brief in Support of Appeal.* Specifically, the applicant claims that the use of her old passport "was never done with the intention to misrepresent facts nor assume the identity of another person." Additionally, while the applicant knew "that its use was contrary to the application already submitted by [her] husband[, she] sincerely acted out of desperation" because of her advanced pregnancy, loneliness, and desire to be with her husband. *See id.* Because the applicant's use of her old passport was knowing and intentional, as opposed to accidental or inadvertent, the applicant's actions were willful. *See Emokah v. Mukasey*, 523 F.3d 110, 116-17 (2d Cir. 2008) ("An act is done willfully if it is done intentionally and deliberately and if it is not the result of innocent mistake, negligence or inadvertence.") (internal quotation marks, alterations, and citation omitted). Moreover, a misrepresentation made in connection with an application for a visa is material if the alien is inadmissible on the true facts, or the misrepresentation tends to cut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be inadmissible. *See Matter of S- and B-C-*, 9 I&N Dec. 436, 448-49 (AG 1961). Because it appears that the applicant was ineligible

for a non-immigrant visa under the true facts, and the applicant has not presented any evidence to the contrary, the applicant's misrepresentation was material. *See id.* Accordingly, the applicant has not met her burden of proof that she is not inadmissible under section 212(a)(6)(C)(i) of the Act. *See* section 298 of the Act, 8 U.S.C. § 1361.

An applicant who is inadmissible under section 212(a)(6)(C)(i) of the Act may apply for a waiver of this ground of inadmissibility under section 212(i) of the Act, which provides:

> (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien . . .

A section 212(i) waiver is dependent upon a showing that the bar imposes an extreme hardship on a qualifying family member. Extreme hardship must be established in the event that the qualifying family member remains in the United States without the applicant, and in the event that he or she accompanies the applicant to the home country. However, a qualifying relative is not required to reside outside of the United States based on a denial of an applicant's waiver request. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

The record contains references to the hardship the applicant's daughter would experience if the waiver application is denied. However, hardship to an applicant's children is not a relevant factor to be considered in assessing extreme hardship under section 212(i) of the Act. Accordingly, hardship to the applicant's daughter will be considered only to the extent that this hardship affects the applicant's spouse.

The concept of extreme hardship "is not . . . fixed and inflexible," and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) ("When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion."); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr.

1979) (noting in the context of a waiver under section 212(i) of the INA that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship unless combined with more extreme impact. In *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant is a 35-year-old native and citizen of Nigeria. The applicant and her husband, 46-year-old [redacted] a native of Nigeria and citizen of the United States, have been married for six years. *See Marriage Certificate* (indicating marriage on February 8, 2003). The couple's daughter was born on November 6, 2003. *See Birth Certificate for* [redacted]. The applicant resides in Nigeria with the couple's daughter. [redacted] lives and works in New York. *See Affidavit of* [redacted], dated July 25, 2005. The applicant asserts that her husband is suffering extreme emotional and financial hardship as a result of the family separation. *See Form I-290B, Notice of Appeal; Brief in Support of Appeal; Affidavit of* [redacted], *supra; Letter of* [redacted], dated May 26, 2006.

In support of the emotional hardship claim, [redacted] describes how the couple fell in love with each other, and states that the separation affects him emotionally. *See Affidavit of* [redacted], *supra.* For instance, [redacted] "cannot function at work properly," and he would like to be able to go to church every Sunday with his wife, and to live "like a married man." *Id.* He loves and misses and needs his family, and because of the nature of his job, [redacted] rarely goes to Nigeria to visit. *Id.* [redacted] fears that their "relatively new marriage will certainly not survive such a brutal [and] devastating separation." *Id.* Additionally, [redacted] states that "Nigeria is not a safe place for anyone, especially a woman alone who would be ostracized by her community for

not being with her husband." *Id.* The applicant adds that [redacted] continues to be traumatized knowing that his wife remains "in a society where single parenthood is viewed as a taboo." *See Brief in Support of Appeal.* The applicant makes reference to "the insecurity of [their] lives and property" and "the ethnic and civil disturbances" in Nigeria, *see id.*, but does not explain the statements, or provide any evidentiary support.

separation from his lawful permanent resident daughter also causes him emotional hardship. Although his daughter lived with him in the United States for eight weeks in 2006, she had to return to Nigeria because [redacted] could not care for her alone. *See Letter of* [redacted] *supra.; Brief in Support of Appeal, supra.* He states that she needs her father, and he needs to be able to show his love and care for her. *Affidavit of* [redacted] *supra.* Additionally, [redacted] is "drastically unhappy and emotionally disturbed" that his daughter will not have access to proper health care and education offered by the United States. *Id.*

In support of the financial hardship claim, states that he is the only one working in the family, and he pays the bills in the United States and Nigeria. *Id.* [redacted] expected his wife to help him make a better living for his family in the United States, and to provide for their child. *Id.* Additionally, [redacted] notes the financial burden imposed as a result of the travel back and forth to Nigeria to visit his family. *See Letter of* [redacted], *supra.* The record contains documents reflecting numerous monetary transfers from [redacted] in New York to the applicant in Nigeria. *See Western Union Receipts.*

The applicant and her husband have provided some evidence regarding the emotional hardships suffered by [redacted] as a result of the separation from the applicant and the couple's daughter. *See Affidavit of* [redacted] *supra*; *Letter of* [redacted] *supra; Brief in Support of Appeal, supra.* However, the record does not contain sufficient documentary evidence to support the claim of extreme emotional hardship. For instance, the record does not reflect an ongoing relationship between a mental health professional and [redacted], or any history of treatment for anxiety or any other conditions. Similarly, there is no documentary support for the applicant's conclusory allegations regarding country conditions in Nigeria (*i.e.,* civil and ethnic strife, the treatment of women without husbands, and limited access to quality educational opportunities and health care), and the impact of these conditions on [redacted] Going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Commr. 1998). Accordingly, the evidence in the current record does not appear to establish that the emotional difficulties encountered by the applicant's husband are beyond those ordinarily associated with deportation or separation. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631.

Additionally, the evidence in the current record does not show that the applicant's spouse would suffer significant economic detriment or other concerns as a result of the denial of a waiver. *See Matter of O-J-O-*, 21 I&N Dec. at 383 (requiring consideration of the cumulative impact of hardships); *Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565 (setting forth list of relevant hardship considerations). [redacted] notes the difficulties of supporting two households, and the high cost

of travel between the United States and Nigeria. However, there is no documentary evidence to support the applicant's contention that in light of his income and expenses, the financial hardship is extreme. *See Matter of Soffici,* 22 I&N Dec. at 165.

Given [redacted] equities in the United States, it appears that relocation to Nigeria to be with his family could cause financial, professional and psychological difficulties for him. However, the applicant did not present any evidence regarding these potential hardships, and these factors will not be weighed in the extreme hardship analysis. *See Matter of Soffici,* 22 I&N Dec. at 165.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's husband, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act.

The applicant contends that the decision by the Acting Officer in Charge contains erroneous factual findings. Specifically, the applicant claims that the Acting Officer in Charge erred in concluding that the applicant "willfully misrepresented [her]self to be another person," and that she "subsequently married [her] spouse knowing that [she] had perpetrated the fraud and misrepresentation." *See Decision of the Acting Officer in Charge, supra.* The applicant correctly notes that her misrepresentation occurred *after* the date of her marriage to [redacted] *See marriage certificate, supra.* However, according to information from the Department of State, it does appear that the applicant misrepresented herself to be another person when she used the name [redacted] with a different year of birth, to apply for a visa on February 10, 2004. Because the applicant is inadmissible under section 212(a)(6)(C) of the Act, the error regarding the timing of the misrepresentation is harmless.

In proceedings for an application for a waiver of the grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* 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.