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

U.S. Citizenship and Immigration Services

[redacted]

DATE: DEC 28 2012 OFFICE: PHILADELPHIA FILE: [redacted]

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Cote d'Ivoire who entered the United States on December 20, 2000 by presenting a Mali passport belonging to another individual. The applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured entry to the United States by fraud or willful misrepresentation. The applicant is a beneficiary of an approved Petition for Alien Relative, as the spouse of a U.S. citizen, who seeks a waiver of inadmissibility in order to reside in the United States with her spouse and children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative. The Field Officer Director denied the application accordingly. *See Decision of the Field Office Director*, dated April 21, 2011.

On appeal, counsel for the applicant asserts that the applicant's spouse will suffer extreme emotional, financial, and medical hardship if he is separated from his spouse because he will not be able to support his family, will worry for his wife's safety in Cote d'Ivoire, and his blood pressure will be affected. Counsel also asserts that the applicant's spouse cannot relocate to Cote d'Ivoire because it suffers from poverty and instability and the applicant's spouse has built his life in the United States.

In support of the waiver application and appeal, the applicant submitted background information concerning Cote d'Ivoire, identity documents, financial documentation, a medical prescription for her child, letters of support, affidavits from the applicant and the applicant's spouse, family photographs, and a letter from her child's school. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (i) 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 Act is inadmissible.

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), waive the application of clause (i) of subsection (a)(6)(C) 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 Attorney General (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 waiver of inadmissibility under section 212(i) 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 or her children 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. 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-Moralez,* 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.

The record reflects that the applicant is a 32-year-old native and citizen of Cote d'Ivoire. The applicant's spouse is a 52-year-old native of Ghana and citizen of the United States. The applicant is currently residing with her spouse and children in Upper Darby, Pennsylvania.

The applicant's spouse asserts that if the applicant departed the United States, he would have to step into her role as caretaker for their three children, ages four, seven, and nine. The applicant's spouse contends that he would not be able to financially afford hiring a caretaker for the children and would have to stay home and watch the children instead of working and rely upon governmental assistance. The applicant's spouse states that if the applicant were "forced to leave the United States, ensuring that my children were taken care of would be my responsibility." The record reflects that the applicant's spouse has been unemployed since January 2009, which reasonably exacerbates his financial and emotional difficulty. The most recent tax records for the applicant's family reflect that they earned $41,996 in 2008. The applicant's spouse states that the applicant sometimes braids hair to bring their family a little more money and help him to provide. While the record does not clearly show the applicant's family's current financial circumstances, the AAO acknowledges the applicant's spouse's concern regarding the cost of childcare for three young children and the resulting economic challenges he would face should he act as a single parent. Due consideration is given to the applicant's family's modest means and the hardship they would face in providing for two adults and three young children in separate households.

The applicant's spouse asserts that the applicant mentally and physically supports him and that he would not be able to survive a separation. Counsel for the applicant asserts that the

applicant's spouse suffers from high blood pressure, but has not been able to afford medication since his unemployment. Counsel contends that the applicant eliminates stress in her spouse's life and prepared homemade remedies to control his medical condition. Counsel further contends that the applicant's spouse would worry about the safety of his spouse living in Cote d'Ivoire. As noted in the Field Office Director's decision, the record does not contain any medical documentation or evidence of prescriptions to support the claim concerning the applicant's spouse's health. The U.S. Department of State issued a travel warning for Cote d'Ivoire on November 16, 2012 identifying serious security risks and crime throughout the country, and the AAO recognizes that significant challenges remain including economic challenges, limited medical services, and reduced educational opportunities. The applicant's spouse further asserts that he would be worried about female genital mutilation (FGM) in Cote d'Ivoire, and he contends that his children will be faced with an unfamiliar language and customs if they reside there. The applicant's spouse's concern for the well-being of the applicant and their children residing there is reasonable and supported by relevant reports. The statements in the record clearly reflect that the applicant's spouse is close with the applicant and their children, and due consideration is given to the emotional hardship he would endure should he be separated from any of them.

In the aggregate, there is sufficient evidence and explanation in the record to support that the applicant's spouse would suffer hardship that is beyond the common results of separation from a spouse due to inadmissibility, such that he would face extreme hardship.

The applicant's spouse asserts that he cannot relocate to Cote d'Ivoire to reside with the applicant because he wants to raise his children in the United States. The applicant's spouse contends that if he relocated to Cote d'Ivoire, they could not reside with the applicant's mother because they would have to help care for her and he could not afford the medical attention she needs. It is noted that the record reflects that both the applicant's mother and the applicant's spouse's mother reside in Cote d'Ivoire. The applicant's spouse is a U.S. citizen and has resided in the United States since 1989, for approximately 24 years, which supports that he has cultural and community ties to the country which would be severed should he relocate to Cote d'Ivoire. Though the record suggests that he was unemployed as of the filing of the present appeal, he has a documented work history in the United States and he would face difficult employment and economic circumstances in Cote d'Ivoire.

The applicant's spouse asserts that he would worry about obtaining his blood pressure medication in Cote d'Ivoire and that he worries that his daughter would not be able to receive the healthcare she requires. As noted, the record does not contain any documentation supporting the applicant's spouse's medical condition. The record does contain a prescription for Ventolin HFA for the applicant's daughter. Though the record does not contain clear medical documentation for the applicant's spouse, due consideration is given to the lack of modern medical facilities in Cote d'Ivoire and the resulting concern he would face. As discussed above, Cote d'Ivoire has serious, documented security risks and concerns, and the applicant's spouse would face the significant challenges of relocating there after a lengthy residence in the United States. It is acknowledged that relocating with three U.S. citizen children ages four, seven, and

nine would exacerbate his difficulty and concern for his family. In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, if he were to relocate to Cote d'Ivoire, rise to the level of extreme hardship.

In *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. All negative factors may be considered when deciding whether or not to grant a favorable exercise of discretion. *See Matter of Cervantes-Gonzalez, supra,* at 12.

The negative factors in this case consist of the following:

The applicant entered the United States through misrepresentation and remained for a lengthy duration without a legal immigration status.

The positive factors in this case include:

The applicant's U.S. citizen spouse will suffer extreme hardship should the applicant reside outside the United States. The applicant's three U.S. citizen children will face hardship should she depart the United States, whether they remain or relocate to Cote d'Ivoire. The applicant has provided emotional support for her U.S. citizen spouse and three U.S. citizen children, and cultivated a strong family unit.

While the applicant's violations of U.S. immigration law cannot be condoned, the AAO finds that the positive factors in this case overcome the negative factors, and the applicant warrants a favorable exercise of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden that she merits approval of her application. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the application is approved.