identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

U.S. Citizenship and Immigration Services

[redacted]

H5

DATE: FEB 15 2012 OFFICE: ACCRA, GHANA File: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Nigeria who 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse and children.

The Field Office 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 July 17, 2009.

On appeal, counsel contests the section 212(a)(6)(C)(i) inadmissibility finding and asserts that the applicant was given no written explanation addressing the specific fraud or willful misrepresentation she was found to have committed. See Form I-290B, *Notice of Appeal or Motion* and *Counsel's Appeal Letter*, dated August 13, 2009. Counsel asserts alternately, that the applicant's spouse would suffer extreme hardship of a familial, economic, and medical nature if a waiver of inadmissibility is not granted. *Id.*

The record contains, but is not limited to: Form I-290B and counsel's appeal letter; Form I-601 and I-601 denial; applicant's spouse's hardship letters and letter to U.S. consulate; tax return, partial mortgage statement, and physician's letter; letters from five of the applicant's children; medical record for son, [redacted] college acceptance letters and tax returns for two of the applicant's daughters; family photos; birth and divorce records; Form I-129F; Form I-130 receipt notice; visa applications; partial passport copies; and memorandum report of interview. 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, that:

> (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.

The record reflects that the applicant was refused a visa on October 21, 2003 and December 22, 2008 and was found inadmissible under § 212(a)(6)(C)(i) of the Act for having procured two different passports only months apart with which she filed two separate visa applications, using two different names, two different dates of birth, and listed a different number of children on each. On February 6, 2003, the applicant presented passport [redacted] with a visa application in the

name of [redacted]. On October 21, 2003, she presented passport [redacted] with a visa application in the name of [redacted]. The applicant listed six children on her February 2003 visa application but only three on the application of October 2003. Additionally, though both passports show an April 12, 1964 date of birth, the applicant listed April 13, 1964 as her date of birth on the latter visa application.

Counsel asserts that the applicant's maiden name is [redacted] and her married name [redacted] thus her use of either or any combination thereof does not represent an attempt to change her identity. See *Counsel's Appeal Letter*, dated August 13, 2009. Counsel asserts that the applicant "made an honest mistake" with regard to listing only three of her six children on the Form DS-156 she presented on October 21, 2003. *Id.* Counsel asserts that the applicant's listing of April 13, 1964 as her date of birth was a mistake or typo given that her passports and birth certificate all reflect an April 12, 1964 date of birth. *Id.* The AAO is inclined to accept counsel's latter assertion. With regard to the others, however, the AAO notes that it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). No such evidence has been submitted. Counsel fails to address the fact that on the applicant's Nonimmigrant Visa Application, Form DS-156, dated October 21, 2003, she failed to disclose both that she had been previously refused a U.S. visa and that she had children living in the United States. In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) of the Act, the burden is on the applicant to establish that she is not ineligible. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met this burden. Based upon the foregoing, the AAO finds that the applicant made a willful misrepresentation in seeking to procure admission to the United States and is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.[1]

Section 212(i) of the Act provides, in pertinent part:

> (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 alien 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

[1] Counsel additionally asserts that while the applicant was provided Form I-601 by the U.S. Consulate, Lagos, Nigeria, she was not given written details concerning the alleged fraud/misrepresentation underlying the finding of § 212(a)(6)(C)(i) inadmissibility. See *Counsel's Appeal Letter*, dated August 13, 2009. The record contains no documentary evidence supporting this assertion. The AAO finds that even if the applicant lacked complete knowledge concerning the grounds underlying her § 212(a)(6)(C)(i) inadmissibility, counsel's letter and the AAO's *de novo* review on appeal provide sufficient opportunity for the applicant to address the issue of inadmissibility.

> 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 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-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's spouse is a 52 year old native of Nigeria and citizen of the United States. The applicant and her spouse had six children together in Nigeria between September 1983 and January 1997. See *Birth Certificates*, various dates. The applicant's spouse entered the U.S. in 1996 or 1997, and he and the applicant divorced in July 1997. See *Divorce Judgment 1*, dated July 18, 1997. The applicant and her spouse were remarried in Nigeria on April 7, 2007. See *Memorandum Report of Interview*, dated January 23, 2009 and *Hardship Letter*, dated August 12, 2009. The applicant's spouse states: "Without a wife in my home it has never being a good time for me due to her absence, because I have to play the role of single parent." See *Hardship Letter*, dated August 12, 2009. The applicant's spouse states that he was diagnosed with hypertension in 2007 which he attributes to "stress from the children." *Id.* [redacted] asserts that the applicant's spouse has been under his care since March 2006, was diagnosed with hypertension in December 2007, takes medication to control his blood pressure, and it is very important he "avoid any unnecessary stress, which may aggravate his condition and may trigger other complications of his illness." *Physician's Letter*, dated January 12, 2009. While the AAO acknowledges and has considered [redacted], the evidence in the record is insufficient to establish that the applicant's spouse will suffer significant medical hardship related to his wife's inadmissibility.

Assertions have been made concerning hardship to the applicant's children. Congress did not include hardship to the applicant's children as factors to be considered in assessing extreme hardship under section 212(i) of the Act, except as it may affect the qualifying relative – here the applicant's spouse. The applicant's spouse states: "My wife not with the family has burden on me in terms of raising the children by myself and try to solve their unanswered questions such as their emotional, mental, physical, social and other needs." See *Hardship Letter*, dated August 12, 2009.

The record reflects that two of the applicant's six children, fifteen-year-old twins [redacted] are currently minors. The elder four are adults. The applicant's spouse states: "My youngest son [redacted] has hearing problem ([redacted] which requires constant observation on the part of the child, that requires more than one parent to carefore." *Id.* The record contains no documentary evidence that [redacted] condition requires constant observation or the care of more than one parent. A *Low Incidence Cooperative Agreement (LICA) Audiologic Record*, dated November 20, 2008, asserts that [redacted] uses a hearing aid in his left ear at school and an ear-level assistance listening device (ALD) in the classroom to help improve his ability to hear his teacher. The applicant's spouse states that [redacted] "is also depressed and always sad constantly asking us when is her mother coming and also telling the teachers about his mom." See *Hardship Letter*, dated August 12, 2009. The record contains no documentary evidence of depression or any related condition suffered by [redacted] The AAO notes that [redacted] came to the U.S. when he was five or six years old without the applicant whom he has not seen since. It appears that he has been raised by his father, former stepmother, and elder siblings throughout his time in the U.S. The applicant's spouse states that his eldest daughters, [redacted] help him with "the domestic work" but have been accepted to universities and will be leaving home. *Id.* The evidence in the record is insufficient to establish that the applicant's spouse would be unable to care for his two minor children in the event his elder daughters go away to college. While the AAO recognizes that the applicant's spouse has faced difficulties as a "single parent" since mid-2007, the applicant has failed to establish that such difficulties are uncommon or extreme such that they will cause extreme hardship to the applicant's spouse.

The AAO acknowledges that separation from the applicant may have caused various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant's spouse states that he has been in the U.S. for more than twelve years and there will be no job for him at his age. See *Hardship Letter*, dated August 12, 2009. The record contains no documentary evidence that the applicant's spouse would be unable to find employment in Nigeria. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant's spouse states that he has a 30-year mortgage and asks who will make the payments if he returns to Nigeria. *Id.* The record contains a page from a *Mortgage Statement*, dated March 11, 2009. The applicant's spouse does not address the possibility of selling or leasing the house in the event he chooses to relocate to Nigeria to join the applicant. While the AAO acknowledges difficulties inherent in relocation abroad, the evidence does not establish that the applicant's spouse would be unable to meet his financial obligations.

The applicant's spouse states that his children's education will suffer setback in Nigeria. See *Hardship Letter*, dated August 12, 2009. The record contains no documentary evidence to support this assertion. He states that both adults and children are being kidnapped in Nigeria, particularly rich people and those with U.S. nationality which could make his own children a target. *Id.* No

documentary country conditions evidence has been submitted. The AAO has, however, reviewed the U.S. State Department's *Nigeria Travel Warning*, dated January 12, 2012. While a risk of kidnapping, robbery, and other armed attacks is noted for several areas in the country, the evidence does not establish that the applicant's children would be likely kidnapping targets should they decide to relocate to Nigeria. The applicant's spouse states that when he went to Nigeria in 2007 to remarry the applicant he forgot to bring his blood pressure medication and was unable to find the same medication in Lagos. *Id.* The applicant's spouse does not assert that he had any health-related difficulties while in Nigeria and the evidence is insufficient to establish that he requires extensive medical attention unavailable to him should he choose to relocate. While the AAO recognizes that there may be relocation-related difficulties for the applicant's spouse and minor children, the applicant has failed to establish that such difficulties would be uncommon or extreme such that they will cause extreme hardship to the applicant's spouse.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including adjustment to a country he has not resided in for more than a decade; separation from family and friends in the United States; loss of current employment; U.S. property ownership; health and safety concerns; and concerns about the education of his children. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if he were to relocate to Nigeria to be with the applicant.

The applicant has, therefore, failed to demonstrate the challenges her spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* 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.