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

U.S. Citizenship and Immigration Services

[redacted]

H5

Date: JUL 0 3 2012 Office: CHICAGO FILE: [redacted]

IN RE: Applicant: [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,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United 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 having procured admission to the United States through fraud or willful misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (From I-130). The applicant contests this inadmissibility finding, but also seeks a waiver pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his wife and children.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director,* April 1, 2010.

On appeal, counsel for the applicant asserts that USCIS failed to consider the applicant's contention his misrepresentation was not willful and, alternatively, that it erred in finding the applicant had not shown undue hardship to a qualifying relative. Counsel submits a brief in support of the appeal and supplements it with evidence requested by USCIS, including copies of the applicant's brother's birth and death certificates, as well as medical records and related information, hardship statements, support letters, an employment letter, and country condition information. Supporting evidence already on record includes, but is not limited to: financial documentation and tax returns; statements from the applicant and his qualifying relative; marriage, divorce, birth, and naturalization certificates; lists of relatives in the United States and overseas; professional licenses and education records. The entire record was reviewed and considered in rendering this decision.

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

> 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)(1) of the Act provides:

> The [Secretary] may, in the discretion of the [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 [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 [...].

The record shows that the applicant presented a B1/B2 visa and a Nigerian passport belonging to his older brother, who documentation shows died on November 20, 1989, to procure admission to the

United States on March 19, 1990 at New York City. Counsel for the applicant now contends that grief over the death of the brother whose identity and documents the applicant used caused him to lose control over his decision making, thereby negating the element of willfulness required for an inadmissibility finding.

Section 212(a)(6)(C)(i) of the Act may be violated by committing fraud or willfully misrepresenting a material fact. *See Mwongera v. INS*, 187 F.3d 323, 330 (3rd Cir. 1999); *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). Fraud consists of "false representations of a material fact made with knowledge of its falsity and with intent to deceive." *See Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956. In the immigration context, a finding of fraud requires that an individual "know the falsity of his or her statement, intend to deceive the Government official, and succeed in this deception." *In re Tijam*, 22 I&N Dec. 408, 424-25 (BIA 1998). Willful misrepresentation does not require an intent to deceive, only the knowledge that the representation is false. *See Parlak v. Holder*, 57 F.3d 457 (6th Cir. 2009)(citing to *Witter v. I.N.S.*, 113 F.3d 549, 554 (5th Cir. 1997); *see also Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995); *In re Tijam, supra*. "The element of willfulness is satisfied by a finding that the misrepresentation was deliberate and voluntary." *See Mwongera, supra*.

There is no evidence on record supporting the applicant's contention that he was mentally impaired in 1990 when he assumed his brother's identity and entered the country using his travel documents. Without such evidence, the applicant has not met his burden of proving he is not inadmissible. In proceedings for application for adjustment of status, the burden of establishing admissibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

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. The applicant's U.S. citizen wife 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 applicant demonstrates that his qualifying relative would suffer extreme hardship in the event that she relocated to Nigeria with the applicant. The personal safety issues cited by counsel in 2009 have persisted or worsened, according to the U.S. Department of State's (DOS) recent Travel Warning. This June 2012 document warns U.S. citizens of the dangers of travel to and within Nigeria and enumerates ongoing security concerns in that country: violent crime (e.g., armed assaults, burglaries, carjackings, rapes, kidnappings, and extortion), perpetrated by both individuals and gangs, and by persons wearing official uniforms; terrorist attacks, including bombings, by

extremist groups; high risk of continued attacks against Western targets; and kidnappings, including the January 2012 abduction of a U.S. citizen in which his security guard was killed and five U.S. citizen abductions in 2011. The Travel Warning also notes that "[t]he situation in the country remains fluid and unpredictable," and that the U.S. embassy has restricted official travel. The record reflects that the qualifying relative is a naturalized U.S. citizen whose concerns over moving back to her birthplace after over 18 years in the United States are warranted by current circumstances there. *See Travel Warning- -Nigeria*, U.S. Department of State, June 20, 2012, and *2011 Human Rights Reports: Nigeria*, U.S. Department of State, May 24, 2012 (*"DOS Reports"*).

In addition to personal security concerns, the qualifying relative claims to have few ties to Nigeria, from which she emigrated at age 13, and the record suggests that a sister she has not seen in 18 years is her only remaining relative there. In addition to the triplets born to her and the applicant in 2008 and a stepchild -- the applicant's son from a prior relationship -- she claims through her counsel to have in the United States her parents, three siblings, three aunts and uncles, and five nieces and nephews. The applicant's wife also claims to have at least 10 relatives on her husband's side in the United States. While she does not directly address her job options overseas, and focuses instead on the applicant's likely problems obtaining employment, the AAO notes that her own prospects of securing employment are subject to her weak country ties.

Regarding health concerns, the applicant's wife expresses worry about ongoing care for her hypothyroidism and polycystic ovarian syndrome (PCOS), and information on the record indicates that this condition predisposes her to other conditions for which regular screening is needed: high blood pressure, high cholesterol, uterine cancer, infertility, heart disease, and diabetes. Besides concern over her own medical conditions, the qualifying relative and her husband worry that pediatric care warranted by their triplets' birth 13 weeks prematurely. The record reflects that all were diagnosed with heart and eye problems associated with short gestation and one required open heart and laser eye surgeries, and the applicant's spouse states that ongoing treatment would be unavailable or prohibitively expensive in Nigeria. Documentation shows the triplets have been diagnosed with developmental delays for which they receive therapy that the applicant's wife claims is unavailable there. Country condition information confirms that medical facilities and diagnostic capabilities are poor, nurses not well trained, counterfeit medicines common, and cash payment often required before services are rendered.

The record reflects that the cumulative effect of the applicant's wife's health and safety concerns, nearly two decade residence in the United States and minimal ties elsewhere, and poor employment prospects, were she to relocate, rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, a qualifying relative would suffer extreme hardship were he to relocate to Nigeria to continue residing with the applicant.

The applicant's counsel contends the applicant's wife will suffer physical, emotional, and financial hardship if she remains in the United States while the applicant resides abroad. The qualifying relative recounts that her relationship with the applicant began in 2005 when mutual friends introduced them; they had an immediate connection, married two years later, and attempted without success to start a family. After being diagnosed with PCOS, she became pregnant with the help of

fertility treatments, but was placed on complete bed rest at 16 weeks due to another medical condition. The qualifying relative asserts that her husband's presence is essential to her physical and emotional well-being, as he uses his nursing skills to watch over her health, but also helps her by communicating with healthcare providers about the medical problems of their triplets and his in-laws, who report suffering from conditions such as high blood pressure, diabetes, and arthritis.

Regarding financial hardship, the record indicates that the applicant has been the primary wage earner since his wife resigned her job to go on bed rest and, thereafter, had to stay home to care for three premature babies. The record shows that the applicant has worked as a licensed practical nurse (LPN) since the late 1990s, and evidence shows his approximate yearly wages from 1998 to 2002 exceeded his wife's income in 2007, the last full year she worked. Due to his lack of country connections, as well as his LPN status, the applicant and his wife contend that his job prospects in Nigeria will be poor because only registered nurse (RN) training is recognized there. The qualifying relative claims that, due to the care requirements of her children, she is unable to return to work and leave them in the care of others; the record shows that, despite the number of her relatives in the United States, none are available to the extent required by their conditions. She asserts that, besides depriving the household of the applicant's U.S. income, his removal will render him unable to support himself, burden her with supporting two households, and make her unable to meet her children's care needs. The applicant has submitted sufficient evidence of the couple's situation to establish that, without his continued presence, a qualifying relative will likely experience hardship that is extreme.

Review of the totality of the evidence on record reflects that the applicant has established his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists,

> and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996).

The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the applicant's U.S. citizen wife and children would face if the applicant were to reside in Nigeria, regardless of whether they accompanied the applicant or remained in the United States; the applicant's residence here for over half his life; employment as a healthcare professional for over 15 years; character references; lack of any criminal convictions; and the passage of over 22 years since the applicant's misrepresentations and unlawful entry into the United States. The unfavorable factors in this matter are the applicant's procurement of U.S. admission by fraud and his unlawful presence here.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violations of immigration law, the AAO finds that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved.