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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: FEB 04 2013 Office: ACCRA, GHANA FILE:

IN RE:

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:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana. The matter 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 misrepresenting material facts to U.S. government officials about her use of two different years of birth in her travel documents and applications. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with her fiancé.

The Field Office Director concluded that the applicant failed to establish that a bar to her admission to the United States would result in extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated December 14, 2011.

The applicant concedes on appeal that her Nigerian passport has an incorrect date of birth, but she asserts that she had "no ulterior or hidden motive" for using it when she obtained her nonimmigrant visa. She states that she applied for a Nigerian passport with a date of birth to make her younger in order to gain entry into an academic program in the United Kingdom.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); letters from the applicant, her qualifying fiancé and his mother; a letter from the qualifying fiancé's pastor and his written materials about marriage; a list of religious materials written by the qualifying fiancé; financial documentation regarding the qualifying fiancé; identification and relationship documents regarding the applicant and qualifying fiancé; country-conditions documents regarding Nigeria; the applicant's school records; a Nonimmigrant Visa Application (Form DS-156) and an approved Petition for Alien Fiancée (Form I-129F). 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.

The BIA has held that the term "fraud" in the Act "is used in the commonly accepted legal sense, that is, as consisting of false representations of a material fact made with knowledge of its falsity and with intent to deceive the other party." *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). The "representations must be believed and acted upon by the party deceived to" the advantage of the deceiver. *Id.* However, intent to deceive is not a required element for a willful misrepresentation of a material fact. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975).

An alien is inadmissible under section 212(a)(6)(C)(i) of the Act when she makes a willful misrepresentation of a material fact in order to obtain an immigration benefit. A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The Board of Immigration Appeals (BIA) has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either: (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well resulted in proper determination that he be excluded. *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

The applicant indicates that she applied for a Nigerian passport with a date of birth to make her younger in order to gain entry into an academic program in the United Kingdom. However, while she provides proof of her United Kingdom school records, she does not provide evidence to substantiate her claims that she had to be younger in order to gain admission to the academic institution. Earlier, the applicant had provided a different explanation for her use of an incorrect date of birth to a U.S. consular officer, stating that a Nigerian government office erred and that the error occurred when she relied on a local government identification letter because she does not have her original birth certificate.

It is incumbent upon the petitioner 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). The applicant provides no evidence to support her assertions regarding her use of a different date of birth. Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 record shows that the applicant misrepresented facts concerning the incorrect information in her passport to U.S. consular officers. A misrepresentation made in connection with a visa application is material if the misrepresentation tends to shut off a line or inquiry which is relevant to the alien's eligibility and which might result in a determination that she be excluded. The applicant's explanations concerning her false date of birth in her passport cut off a line of relevant inquiry regarding her true identity. The applicant's misrepresentation renders her inadmissible under the Act. As the applicant provides no evidence to demonstrate her admissibility, the applicant has not overcome her burden and is therefore inadmissible.

Section 212(i) of the Act provides:

> 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 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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. The applicant's fiancé 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 AAO finds that the applicant has failed to establish that her qualifying relative will suffer extreme hardship as a consequence of being separated from her. The qualifying fiancé asserts that he would suffer religious hardship if he were to be separated from the applicant because of the sacredness of the institution of marriage. The applicant's fiancé indicates that he and the applicant are Christian and are viewed by God as "one flesh." The qualifying fiancé also states that he would be "robbed of [his] Godly responsibilities and duties as [the applicant's] future husband and potential father to [their] future children" if the applicant is not allowed into the United States. Although the qualifying fiancé provides a religious context to his feelings about their separation, his letter does not sufficiently explain the effect that the applicant's absence has had on his life, and the record does not demonstrate how the hardship he is experiencing is beyond the experiences of other similarly separated families.

The applicant must also establish that her qualifying fiancé would suffer extreme hardship were he to relocate to Nigeria to be with the applicant. With respect to this criterion, the qualifying fiancé contends that he will suffer financial hardship if he had to relocate because he has a government job as a materials engineer, for which he has a security clearance and benefits that he would lose upon relocation. He also purchased a home in the United States, and he asserts that he would lose

money if he had to sell his home. Documentation confirms that the applicant's fiancé is employed by the U.S. government and owns a home. However, while the record provides information regarding the qualifying fiancé's income, it lacks evidence of his financial situation, such as his savings and expenses, to demonstrate whether he would suffer financial hardship if he relocated to Nigeria. Further, the record also does not address whether the applicant's fiancé could find employment in Nigeria or whether the applicant is currently employed and could support him. Although the applicant indicates that the qualifying fiancé occasionally has sent her money, no evidence in the record confirms this assertion. Additionally, no evidence indicates whether the applicant earns her own income or is financially dependent on her family.

The applicant's fiancé also states that he could not relocate to Nigeria because of his family ties to the United States, though he concedes that no close family members live near him and that he sees his parents only on an annual basis. Further, the qualifying fiancé indicates that he could not communicate with his mother, father and grandfather from Nigeria, yet does not explain why. Further, the applicant's fiancé states that he would have to leave his Christian church, which is like a family to him, if he relocates to Nigeria. He asserts that he would have safety concerns as a practicing Christian living in Nigeria. To corroborate his concerns, the record contains articles regarding the bombing of a Catholic church in 2011 by an Islamic terrorist group advocating for full implementation of the Sharia system and for democracy and the constitution to be suspended. According to the U.S. Department of State International Religious Freedom Report for 2011, the terrorist group Boko Haram has likely killed more Muslims than Christians in Nigeria. *See Bureau of Democracy, Human Rights and Labor, International Religious Freedom Report of 2011 for Nigeria.* The report also indicates that Christians account for 45 per cent of the population and that the Nigerian federal government generally respected religious freedom, though it did not act swiftly to counter religious violence. Further, there was no evidence provided to show that the applicant herself has experienced difficulties as a Christian in Nigeria. Without more, it is not possible to conclude that the applicant's qualifying fiancé would experience hardship as a Christian in Nigeria. As such, the applicant has not met her burden of demonstrating that her qualifying fiancé will suffer extreme hardship in the event that he relocates to Nigeria.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 fiancé as required under section 212(i) of the Act. 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.