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: JUL 23 2014 Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v), 212(h) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), 1182(h) and 1182(i)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision is withdrawn.

The record establishes that 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 having attempted to procure a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. The applicant was also found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude, and under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her lawful permanent resident mother and U.S. citizen daughter.

The director concluded that the applicant had failed to establish that she had a United States citizen or lawful permanent resident spouse or parent for purposes of obtaining a waiver under sections 212(i) and 212(a)(9)(B)(v) of the Act, for misrepresentation and unlawful presence respectively. The director consequently denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Director,* dated January 9, 2013.

On appeal counsel for the applicant submitted evidence of lawful permanent resident status in the United States of the applicant's mother and medical documentation pertaining to her. We found that the applicant had not established that her mother would experience extreme hardship were she to remain in the United States while the applicant continues to reside abroad due to her inadmissibility, and that as relocation had not been addressed the applicant had not established that her mother would experience extreme hardship were she to relocate to Nigeria, her native country, to reside with the applicant. *Decision of the AAO*, dated January 15, 2014.

On motion counsel for the applicant submits a brief, statements from the applicant's daughter and two of the applicant's sisters, a letter from the mother's doctor, medical information, financial documentation, country information for Nigeria, and copies of previously-submitted documentation. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
>
> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime… is inadmissible.

. . .

(II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

. . . .

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

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

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –

(i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .; and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

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.

. . . .

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

(1) The Attorney General may, in the discretion of the Attorney General, 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 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 . . .

Section 212(a)(9)(B) of the Act provides, in pertinent part:

Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

. . . .

> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> . . . .
>
> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien…

On motion counsel contests the finding that the applicant is inadmissible under 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. The record establishes that the applicant was convicted of Theft by Shoplifting in the State of Georgia in 1987, but counsel asserts that because the applicant was sentenced to one year probation she was convicted under the Georgia Annotated Code section 16-8-14(b)(1) for a misdemeanor rather than under section 16-8-14(b)(2) for a felony, and therefore qualifies for the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act. The record indicates, however, that the applicant was convicted of theft by shoplifting merchandise with a value in excess of $100. *See Grand Jury Indictment and Final Disposition from the Superior Court of Fulton County, Georgia dated July 31, 1987.* At the time of the applicant's conviction, section 16-8-14(b)(2) of the Georgia Annotated Code provided, in pertinent part:

> (2) A person convicted of the offense of theft by shoplifting, as provided in subsection (a) of this Code section, when the property which was the subject of the theft exceeds $100.00 in value commits a felony and shall be punished by imprisonment for not less than one nor more than ten years.

As noted in our previous decision dismissing the applicant's appeal, the applicant does not qualify for the exception under section 212(a)(2)(A)(ii)(II) for petty offenses because the maximum penalty for the crime is not less than one year. The applicant is inadmissible to the United States under 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude.

The activity for which the applicant was convicted occurred more than 15 years ago and thus, she is eligible for a waiver pursuant to section 212(h)(1)(A) of the Act. However, as the applicant also requires waivers pursuant to sections 212(i), for fraud or willful misrepresentation, and 212(a)(9)(B)(i)(II) of the Act, for unlawful presence, she must establish extreme hardship to her lawful permanent resident mother. Although the applicant's daughter is a qualifying relative for a waiver under section 212(h), the applicant requires a waiver due to her misrepresentation and

unlawful presence accrued in the United States; where the only qualifying relative is the applicant's mother.

Waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act are 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 lawful permanent resident mother is only qualifying relative in this case. Hardship to the applicant or her U.S. citizen daughter can be considered only insofar as it results in hardship to a 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 v. I.N.S.,* 138 F.3d 1292, 1293 (9th Cir.1998) (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.

In our decision we found that while counsel had submitted a letter from the applicant's mother's doctor outlining her medical conditions, the documentation did not establish what specific hardships the applicant's mother will face were the applicant to continue residing abroad. We noted that the applicant's adult daughter and sibling reside in the United States and that the applicant had not established that they would be unable to assist the applicant's mother should the need arise.

On motion counsel maintains that a medical report prepared by a U.S. physician shows that the applicant's 77-year-old mother suffers from diabetes, hypertension, early dementia, arthritis and glaucoma. The note from the mother's physician states that the applicant is the primary care giver, giving her mother insulin shots, administering medication, and monitoring her diet. The physician also states that dementia has started to advance causing her to forget to take medication and complete other daily responsibilities, and the applicant is solely responsible for her mother's health and well-being. Counsel asserts that applicant has cared from her mother since 2004, as she has had medical training while her siblings in the United States have not and are thus incapable of fulfilling the mother's medical needs. Counsel also asserts that the mother will not allow anyone to care for her except the applicant, which counsel asserts is why the applicant's mother traveled with the applicant to Nigeria when the applicant went to obtain a visa at the U.S. Embassy. Counsel submits general medical reports to support the seriousness of the mother's afflictions, particularly given her age.

Counsel asserts that since the applicant departed the United States in 2011 she has been unable to pay household bills because she has been unemployed in Nigeria and that the applicant's mother has been unable to work due to her age and health. Counsel asserts that the mother is completely

dependent on applicant for survival, as she is the sole economic provider, and counsel states that the applicant claimed her mother as a dependent on her taxes.

Statements submitted from two of the applicant's sisters contend that they have no medical knowledge to help with their mother and cannot financially support her due to their incomes and having to support their own families, and both state that their mother will only allow the applicant to care for her. Both also state that a sister living in Nigeria travels often so is unable to help with their mother there.

Counsel further asserts that the applicant's daughter is experiencing severe financial hardship as a result of the applicant's departure to Nigeria, and that the applicant does not want her daughter to visit Nigeria because of female genital mutilation practiced by her tribe. A previously-submitted note from the applicant's doctor stated that the applicant and her daughter were suffering stress and emotional disorder due to their separation.

In statements submitted by the applicant's daughter she asserts that when the applicant went to Nigeria for a visa, all financial support from her stopped, leaving the daughter to pay family bills, including mortgage, and she fears losing her childhood home. The daughter states that she has financial hardship beyond her means that is draining and emotionally disturbing. She states that she is depressed and sees a psychiatrist for depression and anxiety exacerbated by separation from the applicant. The daughter states that she helped care for her grandmother from 2004 to 2011 by bathing, cleaning, and clothing her, taking her for walks, and reading to her. The applicant's daughter states that her grandmother now cries over the phone when they talk. The applicant's daughter states that she is financially unable to visit Nigeria, that she does not speak the language of her relatives, and that she fears the female genital mutilation practiced by the tribe.

A previously-submitted mental health evaluation of the applicant's daughter notes that she had seen a therapist in the past, suffers from anxiety and depression, has difficulty with attention and concentration, and has no family support.

Here we find the record establishes that the applicant's mother would experience extreme hardship due to separation from the applicant. Evidence submitted to the record shows that the applicant's mother is elderly with multiple health concerns and is dependent on the applicant for her medical needs as well as financial support.

We also find the record to establish that the applicant's mother would experience extreme hardship if she were to relocate to Nigeria. Counsel cites country information about Nigeria indicating that health care providers do not meet U.S. standards. He also cites reports that there is an unavailability of adequate medical care and medicines, a high price of medications, a lack of trained mental health workers who could treat dementia, and few nursing homes. Counsel states that the applicant and her mother are now living with a distant relative in Nigeria and are no longer welcome, but have no income to rent suitable living quarters. He further asserts that the mother suffers emotional hardship from being separated from the applicant's daughter with whom she resided since 2004 and who

previously assisted in her care. Counsel asserts the applicant's mother is also suffering from separation from her other children and grandchildren in the United States.

The applicant's statement describes her own hardship in Nigeria being separated from her only daughter, and the difficulty living and eating in Nigeria where her only relatives are too poor to help. She states that she has no employment and fears crime there. She also states that her daughter has dropped out of school to work and is taking psychiatric medication.

According to a U.S. Department of State Travel Advisory, dated May 6, 2014, the security situation in Nigeria remains fluid and unpredictable. The warning urges U.S. citizens in Nigeria to keep personal safety and health in the forefront, and notes that kidnappings remain a security concern and that violent crimes occur throughout the country.

As the record shows that the applicant's elderly mother is separated from family while having health, safety and financial concerns, it has been established that she suffers extreme hardship by relocating abroad to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her lawful permanent resident mother would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, we find that the circumstances presented in this application rise 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). We 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 hardships the applicant's lawful permanent resident mother and U.S. citizen daughter would face if the applicant is not granted this waiver; the applicant's support from her family and friends in the United States; her financial support of her mother and daughter; and payment of taxes over a 15-year period. The record shows that the applicant has had no further convictions or arrests since 1987. The unfavorable factors in this matter are the applicant's violation of U.S. immigration laws and her criminal conviction in 1987.

Although the violations committed by the applicant are serious in nature, we find that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met

ORDER: The motion is granted and the previous decision of the AAO is withdrawn.