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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
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U.S. Citizenship  
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FILE: [REDACTED]

Office: ROME, ITALY

Date: **JUL 23 2010**

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Rome, Italy, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and children in the United States.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated September 10, 2007.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED], indicating they were married on June 5, 2005, in Nigeria; a copy of Ms. [REDACTED] naturalization certificate; an affidavit from the applicant; a letter, affidavit, and declaration from Ms. [REDACTED] letters from Ms. [REDACTED] physicians; two psychological evaluations of Ms. [REDACTED] a copy of the birth certificate of the couple's U.S. citizen son, Somachi; letters from Somachi's physician and his child care center; a copy of a hospital record of the couple's U.S. citizen daughter, [REDACTED]; a developmental profile for [REDACTED] and documentation that she requires weekly speech therapy sessions; documentation showing the applicant was removed from the United States on March 2, 1999; letters from Ms. [REDACTED] employers; a letter of support; letters from the applicant's physicians in Nigeria; a copy of the U.S. Department of State's Travel Warning for Nigeria and other background materials; tax and other financial documents; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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) provides:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such

immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien. . . .

The district director found, and the applicant does not contest, that on February 24, 1999, the applicant attempted to enter the United States using a photo-substituted [REDACTED] passport containing a photo-substituted United States nonimmigrant visa in the name of "[REDACTED]". The applicant was removed from the United States on March 2, 1999. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. *See* Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). An applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, as well as should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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.

*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). In addition, the Court

of Appeals for the Ninth Circuit has held that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *See Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted); *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme) (citations omitted).

In this case, the record shows that the applicant wed ██████████, a native of Nigeria and naturalized U.S. citizen, on June 5, 2005, in Nigeria. The record also shows that the couple has two U.S. citizen children who are currently two and five years old. The applicant’s spouse is a qualifying relative for purposes of a section 212(i) waiver. Hardship to the applicant’s children will be considered only insofar as it results in hardship to the applicant’s spouse.

The applicant’s wife, Ms. ██████████, states that she has suffered extreme mental, financial, and physical hardship as a result of her separation from the applicant. She states that she is a single parent to their two children and has no one to help her care for her children. Ms. ██████████ contends she is a registered nurse in the United States and that she has a good career. She states she has to work on weekends in order to meet the family’s financial needs and that she never gets to rest or have a break from being a single parent. Ms. ██████████ states that she is sometimes required to work extra hours due to the shortage of nurses, but that she cannot do so because she must pick up her son from daycare, which charges her one dollar for every minute he stays late. She states she is afraid her water and electricity will be shut off if she is unable to pay her bill, contends that she has been getting “constant calls from the hospital regarding [her] daughter’s unpaid medical bills,” and states that she received a letter from her son’s daycare center telling her to make an immediate payment prior to him being admitted to classes. Furthermore, Ms. ██████████ contends she has suffered two miscarriages due to traveling to Nigeria. She states that after work, she is so tired that she cannot take care of her children alone, but yet she has no other choice. According to Ms. ██████████, when she is sick, there is no one to help her and states that she was alone in the hospital after she gave birth to her daughter.

Ms. ██████████ also contends that although she has a nursing license, she does not have a Bachelor of Science in Nursing (BSN) degree, a degree she would like to earn in order to gain greater opportunities and better pay. She states that without a BSN degree, she must “stay working in nursing homes, which is more exhausting, pays less, and has more difficult hours.” According to Ms. ██████████ she lost her last nursing job because she could not be as reliable as they wanted her to be due to family obligations such as taking care of her son when he was sick and traveling to Nigeria to see her husband. In addition, Ms. ██████████ states that she is afraid she will lose her new job because she has trouble focusing and controlling her emotions. She states that as a single parent, she will inevitably miss work occasionally and although she feels like she is running herself into the ground, she cannot stop or else her family will suffer further.

In addition, Ms. ██████ states she cannot relocate to Nigeria “due to the incredibly dangerous and unstable conditions there and because [her] family has no means of financial support there.” She contends she would be deeply concerned about the health and sanitation situation in Nigeria for her family and that educational and medical facilities are far inferior to those in the United States. She states that moving to Nigeria would mean losing not only her salary, but also the health insurance they currently have in the United States. Moreover, Ms. ██████ claims that female genital mutilation is widely practiced in Nigeria and though even though she would try to prevent her daughter from being subjected to it, “[i]t is often the older women and relatives that subject girls to this procedure” and she “cannot be everywhere at once.” Ms. ██████ states that there is trafficking in women and young girls in Nigeria as well as societal discrimination and violence against women. Furthermore, Ms. ██████ states she is a Christian and is raising her children in the Christian faith. She states she is concerned about the violence occurring in Nigeria due to the Muslim population’s attempts to impose Sharia Islamic law. *Declaration of Nnenna Iwunze*, dated June 12, 2009; *Affidavit of Nnenna Iwunze*, dated June 12, 2007; *Letter of Hardship by ██████*, dated October 18, 2006.

According to Ms. ██████, prior to her daughter’s birth, her monthly expenses totaled approximately \$1,800. *Statement and Documentation of ██████* undated. According to the most recent tax documents in the record, in 2004, Ms. ██████ earned \$42,064 in wages from two separate jobs. *2004 U.S. Individual Income Tax Return (Form 1040)*, dated February 9, 2005; *2004 Wage and Tax Statement (Form W-2)*.

Two psychological evaluations for Ms. ██████ are contained in the record. According to the psychologist, Ms. ██████ has a childhood history of abuse from “her family’s turbulent domestic situation.” According to the psychologist, Ms. ██████ has a “significant family history of mental illness, including probable mood disorder in other family members . . . which leaves her more vulnerable than average to developing chronic, more debilitating depressive illness over the lifespan.”

The evaluation further states that Ms. ██████ suffered two miscarriages – the first in March 2003 and the second in 2006 – and states that Ms. ██████ suffers from major depression. The psychologist contends that Ms. ██████’s employment has been affected by her depression. In addition, the psychologist states that both of Ms. ██████’s children suffer from separation anxiety disorder and that her daughter, ██████, was recently diagnosed with a significant delay in her speech development. Ms. ██████ reported that an assessment determined that her daughter, who was two years old at the time, has the language of only an eleven-month old child and is now receiving speech therapy once a week at her daycare center. According to the psychologist, if Ms. ██████ moved to Nigeria with the children, “there would be no speech therapy or special educational support services available to [Meme] in Nigeria.”

The psychologist states that Ms. ██████ was “able to realize one of her dreams” when she moved her children out of the dangerous neighborhood in which they were living and purchased a home in

Milton, Massachusetts in late 2008. Moreover, according to the psychologist, Ms. [REDACTED] chronic depression and high level of stress has caused her to lose her temper frequently. Ms. [REDACTED] purportedly has left several jobs over the past two years because of "angry outbursts at supervisors and/or co-workers." Ms. [REDACTED] reported "another crisis at her current job," that made her so upset she considered leaving work for short-term disability and went to the emergency room where she was diagnosed with depression and prescribed an antidepressant. According to the psychologist, "[o]ne of the most problematic aspects of her chronic depressive illness is her high level of irritability, which causes her to become impatient with others in the workplace." Ms. [REDACTED] also purportedly suffers from knee pain and is considering changing jobs to one which would involve more driving and less time on her feet. She also purportedly suffers from "bad reflux," insomnia, hair loss, changes in weight, extreme fatigue, chronic pain, frequent headaches, suicidal thoughts, and difficulty concentrating. *Psychological Evaluation of [REDACTED]*, dated July 20, 2009, and September 15, 2007.

A letter from Ms. [REDACTED] previous employer states that Ms. [REDACTED] was an employee from October 21, 2002, until July 30, 2006. According to the employer, Ms. [REDACTED] worked twenty-four hours per week, earning \$29.36 per hour. *Letter from [REDACTED]*, dated July 3, 2007. A letter from another employer states that she has been employed since April 3, 2007, and was out on a non-paid maternity leave. *Letter from [REDACTED]*, dated July 10, 2007. Another letter from an employer indicates that as of December 20, 2007, Ms. [REDACTED] was being placed on a weekly performance review due to numerous areas of concern regarding her job performance, including being argumentative. *Letter from [REDACTED]*, undated.

A letter from a physician in Nigeria states that the couple's son was treated for gastroenteritis on October 16, 2006, and on October 26, 2006. The physician further states that on November 27, 2006, the couple's son was treated for a respiratory tract infection and gastroenteritis. In addition, the physician states that the couple's son was hospitalized from November 28, 2006, until December 3, 2006, and treated for [REDACTED]. *Letter from Dr. [REDACTED]* dated October 2, 2007.

A developmental profile for [REDACTED] in the record states that she was evaluated when she was twenty-three months old. According to the developmental profile, [REDACTED] expressive language was the equivalent of an eleven-month old child and her receptive language was the equivalent of a seventeen-month old child. The profile concluded that [REDACTED] qualified to receive early intervention services due to these delays in her language skills. *Developmental Profile*, dated June 16, 2009. Documentation in the record states that the couple's two year old daughter requires speech therapy once per week. *IFSP Review Page*, dated April 5, 2010.

An affidavit from the applicant states that he is working in Nigeria as a private legal practitioner in a "skeletal Legal Practice." The applicant contends that he does not make enough money to pay his rent, office space, electricity, and other expenses. The applicant claims he also supports his elderly parents. He states he relies on money his wife sends him from the United States. *Affidavit of Chukwuma Clement Amadi*, dated October 25, 2007.

A letter from the applicant's physician in Nigeria states that the applicant has been a patient for primary hypertension since July 2005, a "condition[] [that] has been complicated by emotional liability owing to the continued separation from his wife. This has resulted in persistent and resistant Hypertension." *Letters from* [REDACTED], dated October 24, 2007, and February 10, 2007.

After a careful review of the record, the AAO finds that Ms. [REDACTED] has suffered, and will continue to suffer, extreme hardship if the applicant's waiver application were denied.

The record shows that Ms. [REDACTED] has been single parenting her two U.S. citizen children who are currently two and five years old, the younger of whom qualifies for early intervention services due to delays in her language skills. In addition, the record indicates that Ms. [REDACTED] currently works full-time and sends money to help support her husband in Nigeria. Moreover, according to the psychological evaluations in the record, Ms. [REDACTED] suffers from major depression, has symptoms of post-traumatic stress disorder, and has a significant family history of mental health problems. Furthermore, according to the psychologist, Ms. [REDACTED] chronic depression and high level of stress has caused her to lose her temper frequently and the record shows she has been given notice at work regarding concerns with her job performance. Considering these unique factors cumulatively, the AAO finds that the effect of separation from the applicant on Ms. [REDACTED] goes above and beyond the experience that is typical to individuals separated as a result of inadmissibility and rises to the level of extreme hardship.

Furthermore, the AAO finds that if [REDACTED] had to move to Nigeria to be with her husband, she would experience extreme hardship. The record shows that Ms. [REDACTED] has lived in the United States for twelve years. In addition, the record indicates that the couple's son was hospitalized in Nigeria for six days and treated for malaria. Furthermore, moving to Nigeria would disrupt the early intervention services the couple's daughter is receiving. If Ms. [REDACTED] moved back to Nigeria, she would need to readjust to a life in Nigeria, a difficult situation particularly considering her concerns regarding the safety in Nigeria, a concern supported by the U.S. Department of State's most recent revised Travel Warning. The Travel Warning states, in pertinent part:

Violent crime committed by individuals and gangs, as well as by some persons wearing police and military uniforms, is an ongoing problem throughout the country, especially at night. Visitors and resident U.S. citizens have experienced armed muggings, assaults, burglary, carjacking, rape, kidnappings, and extortion - often involving violence. Home invasions remain a serious threat, with armed robbers accessing even guarded compounds by scaling perimeter walls; following, or tailgating, residents or visitors arriving by car into the compound; subduing guards and gaining entry into homes or apartments. Armed robbers in Lagos also access waterfront compounds by boat. U.S. citizens, as well as Nigerians and other expatriates, have been victims of armed robbery at banks and grocery stores and on airport roads during both daylight and evening hours. Law enforcement

authorities usually respond slowly or not at all, and provide little or no investigative support to victims.

*U.S. Department of State, Travel Warning, Nigeria*, dated May 24, 2010. In sum, the hardship Ms. [REDACTED] would experience if her husband were refused admission is extreme, going well beyond those hardships ordinarily associated with inadmissibility. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that Ms. [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case is the applicant's willful misrepresentation of a material fact in order to obtain an immigration benefit. The favorable and mitigating factors in the present case include: the extreme hardship to the applicant's wife if he were refused admission; family ties in the United States including his U.S. citizen wife and two U.S. citizen children; the passage of 11 years since the applicant's immigration violation; and the fact that the applicant has not had any criminal convictions in the United States.

The AAO finds that, although the applicant's immigration violation is serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.