

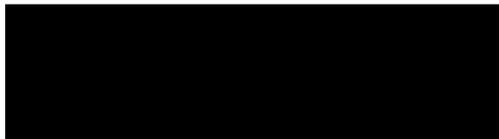
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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Date: JUL 12 2011

Office: NEWARK, NJ

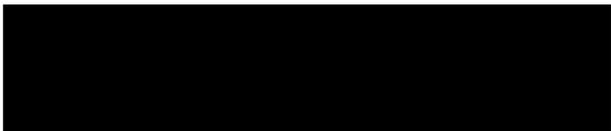
FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), and section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11)

ON BEHALF OF APPLICANT:



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, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit, and section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), for alien smuggling. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), and section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to her spouse. In addition, the field office director found that that the unfavorable factors outweigh the favorable factors in the case such that the applicant does not merit a waiver in the exercise of discretion. The field office director denied the waiver application accordingly. *Decision of the Field Office Director*, dated September 15, 2009.

On appeal, counsel contends that the applicant has established extreme hardship to her spouse, particularly considering his medical conditions and overall poor health. Counsel also contends the favorable factors in the case outweigh the unfavorable factors.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, Mr. [REDACTED], indicating they were married on March 10, 1992; copies of passports and birth certificates of the couple's three children; a letter from the applicant; an affidavit and a letter from Mr. [REDACTED] a letter from Mr. [REDACTED] physician and copies of medical records; letters from Mr. [REDACTED] employer; a copy of the U.S. Department of State's Country Specific Information for Nigeria and other background materials; copies of pay stubs, tax records, and other financial documents; letters of support; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

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, in pertinent part:

(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 . . . .

Section 212(a)(6)(E) of the Act provides:

- (i) Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible. . . .
- (iii) Waiver authorized. - For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), provides:

The Attorney General [Secretary] may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

In this case, the applicant concedes that on February 5, 1995, she attempted to enter the United States with her son using fraudulent passports. *Letter from* [REDACTED] undated (stating that she regrets having tried to use a fraudulent passport to get into the United States with her son). In addition, the record shows, and the applicant does not contest, that on or about August 9, 1996, the applicant entered the United States without inspection and has resided in the United States ever since. Therefore, the applicant is inadmissible 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 and is eligible for a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The applicant is also inadmissible for knowingly and willfully aiding and abetting an alien, her son, to try to enter the United States in violation of law. Therefore, the applicant is inadmissible under section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E), as an alien who has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law. A section 212(d)(11) of the Act waiver of inadmissibility is dependent upon a showing that the alien (1) only aided an individual who, at the time of the offense, was the alien's

spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law; and (2) the alien either, had been admitted to the United States as a lawful permanent resident alien and did not depart the United States under an order of removal, or, is seeking admission as an eligible immigrant. In the present case, the applicant was attempting to smuggle her son into the United States and she is seeking admission as an eligible immigrant. Therefore, the applicant is eligible for a section 212(d)(11) of the Act waiver of inadmissibility.

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.

In this case, the applicant's husband, [REDACTED], states that his wife is his life and his best friend. He states that they have three U.S. citizen children together, that their children were raised in the United States, and that the United States is the only country in which they are accustomed. In addition, [REDACTED] states he suffers from hypertension, gastro-esophageal reflux, diabetes, depression, and anxiety. He contends he has been under the care of the same physician since 1996 and that his wife plays an integral role in the treatment and care of his medical conditions. According to [REDACTED] he takes two medications to address his reflux and his depression and anxiety. He also contends he monitors his blood sugar levels three times a day by pricking his finger and that his wife prepares all of his meals which is particularly important considering his doctor advised him to avoid eating out and his diet has completely changed. [REDACTED] contends that he worries about his wife having to leave the United States and that his worry is debilitating, sometimes causing painful migraines. In addition, [REDACTED] contends he would suffer extreme financial hardship if his wife returned to Nigeria because they are able to afford their mortgage payments and bills because of her income as a Licensed Practical Nurse. He contends he would not be able to financially support himself and their three children without his wife's income. Furthermore, [REDACTED] contends he cannot move to Nigeria to be with his wife because he would have to leave his job as a residential counselor, a position he has worked very hard to obtain, and would have to give up on his plan of getting a nursing degree in order to further advance his career. He contends he fears moving their children to Nigeria because he is "absolutely certain that [their] daughters would be subjected to the cruel and gruesome practice of female circumcision." He states they are members of the Yoruba tribe and are from the [REDACTED] where their daughters would be subject to female circumcision despite their objections and that Nigerian authorities would not help them. Moreover, [REDACTED] contends their daughter, [REDACTED] was born with a congenital heart condition and is at increased risk of infections of her heart lining and heart valves. *Affidavit of [REDACTED]* dated October 12, 2009; *Letter from [REDACTED]*, undated.

A letter from [REDACTED] physician states that [REDACTED] has been a patient since 1996. According to the physician, [REDACTED] suffers from diabetes mellitus, hypertension, and gastro-esophageal reflux disease. The physician contends [REDACTED] needs a great amount of support and assistance from his wife and states "with a great degree of certainty that [he] will suffer

undue hardship emotionally, psychologically, physically and financially” if they were separated. The physician also notes that their daughter, [REDACTED], “is in need [of] total care.” *Letter from [REDACTED]* dated October 9, 2009. A copy of a “wallet card” indicates that [REDACTED] has been diagnosed with a heart condition (muscular VSD) and that she needs protection from bacterial endocarditis. The card includes instructions for numerous procedures, including dental or oral procedures, respiratory tract procedures, esophageal procedures, and genitourinary/gastrointestinal procedures.

Upon a complete review of the record evidence, the AAO finds that if [REDACTED] remained in the United States without his wife, he would suffer extreme hardship. The record shows that [REDACTED] and the applicant have been married for almost twenty years. The record also shows that Mr. [REDACTED] has lived in the United States since at least 1994. In addition, the record indicates he suffers from several medical conditions, including diabetes, hypertension, and gastro-esophageal reflux disease and has seen the same physician since 1996. According to his physician, Mr. [REDACTED] relies heavily on his wife for assistance due to his medical conditions. In addition, the record shows that the couple has two U.S. citizen daughters who are currently eleven and fourteen years old. The record contains extensive evidence substantiating [REDACTED] contention that if his daughters relocated to Nigeria, they would be at significant risk of female genital mutilation. According to the U.S. Department of State, 90-98% of females in the state of Ondo, where, according to [REDACTED], the family would live if they relocated to Nigeria, have been subjected to female genital mutilation (FGM). *U.S. Department of State, Nigeria: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC)*, dated June 1, 2001. The report states that the Yoruba tribe practices FGM, that the practice can occur at any age, and that the U.S. Department of State “is unaware of any support groups to protect an unwilling woman or girl against this practice.” *Id.*; see also *Nigeria: Female Genital Mutilation (FGM) Practices Among the Yoruba Ethnic Group and the Consequences of Refusal for Parents*, dated February 17, 2003. Although hardship to the applicant’s children can be considered only insofar as it results in hardship to a qualifying relative, considering the unique circumstances of this case in their totality, the AAO finds that if the applicant’s waiver application were denied and the children stayed in the United States, Mr. [REDACTED] would experience extreme hardship as a single parent, particularly considering the length of his marriage, his own health problems, and his younger daughter’s documented heart condition. In addition, if the children moved to Nigeria with their mother, [REDACTED] would also experience extreme hardship. This finding is based on the extreme emotional harm [REDACTED] would experience due to concern about his daughters’ well-being in Nigeria considering the possibility they would undergo FGM, a concern that is beyond the common results of removal or inadmissibility.

The AAO also finds that if [REDACTED] returned to Nigeria to be with his wife, he would experience extreme hardship. Relocating to Nigeria would disrupt the continuity of his medical care and he would need to readjust to a life in Nigeria after having lived in the United States since at least 1994. Additionally, as described above, relocating to Nigeria with his family would put his daughters at risk of FGM. The AAO further takes administrative notice of the U.S. Department of State’s Travel Warning for Nigeria, warning U.S. citizens of the risks of travel to Nigeria considering the amount of violent crime committed by individuals and gangs, as well as by persons wearing police and military uniforms, throughout the country. *U.S. Department of State, Travel Warning, Nigeria*, dated April 15,

2011. Based on these considerations, the AAO finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that Mr. Famakinwa faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility for humanitarian purposes to assure family unity 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 factors in the present case include the applicant's misrepresentation of a material fact to procure an immigration benefit, the applicant's attempt to smuggle her son into the United States, the applicant's subsequent entry without inspection into the United States, her unlawful presence in the United States, and periods of unauthorized employment. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including her U.S. citizen husband and children; the extreme hardship to the applicant's husband and children if she were refused admission; letters of support describing the applicant as gentle and peaceful, and very involved with her children's education and the church, *Letter from* [REDACTED], dated January 19, 2009; *Letter from* [REDACTED], dated January 15, 2009; *Letter from* [REDACTED], undated; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violations are 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.