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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



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DATE: MAR 12 2012 OFFICE: ACCRA, GHANA FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Immigration and
Nationality Act section 212(i); 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.

Thank you,

Michael Shumway
for Perry Rhew, Chief
Administrative Appeals Office

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

The applicant, a native and citizen of Nigeria, was found inadmissible under INA § 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresentation due to her attempted procurement of a visa by willfully misrepresenting a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative filed by her U.S. citizen husband. The applicant seeks a waiver of inadmissibility pursuant to INA § 212(i), 8 U.S.C. § 1182(i), based on extreme hardship to her husband.

In a decision dated October 2, 2009, the Field Office Director concluded that the required standard of proof of extreme hardship to a qualifying relative was not met and the application for a waiver of inadmissibility was denied accordingly.

On appeal, the applicant submits additional evidence to supplement the record regarding the extreme hardship to her U.S. citizen husband.

In support of the waiver application, the record includes, but is not limited to, a letter from the applicant's spouse, letters from the applicant, documentation regarding the applicant's spouse's employment, documentation regarding the applicant's spouse health and retirement benefits in the United States, the applicant's spouse's medical records, documentation regarding the applicant's spouse's parent's health, documentation regarding the applicant's health, documentation regarding the applicant's spouse's property in the United States, biographical information for the applicant and her spouse, documentation concerning the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under INA § 212(a)(6)(C), which 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 Field Office Director found that the applicant willfully misrepresented a material fact when she used an incorrect date of birth on a prior nonimmigrant visa application. The applicant admitted to using her maiden name and false date of birth in connection with a prior visa application in order to obscure her identity and increase the chance that she would be granted a visa to the United States where she could join her husband. The applicant does not contest the

inadmissibility finding on appeal. The AAO finds that the applicant is inadmissible under INA § 212(a)(6)(C)(i) for a willful misrepresentation of a material fact.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

(1) 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.

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 in this case is the applicant's U.S. citizen husband. Hardship to the applicant is not directly relevant under the statute and will be considered only insofar as it results in hardship to the applicant's spouse. 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-Morales*, 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).

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 qualifying relative is the applicant’s U.S. citizen husband. The applicant’s spouse states that he will suffer emotional and financial hardship should he continue to reside in the United States apart from the applicant. In support of the financial hardship that he will suffer, the applicant submitted documentation illustrating that his income had decreased in the past year due to his wife’s inadmissibility. The applicant’s spouse, who the record demonstrates is employed as a Licensed Practical Nurse, states that he has reduced the amount of overtime work that he has done in the past year due to feelings of depression. In support of this statement, the applicant’s spouse submitted a copy of his 2008 tax returns and a letter from his employer. The applicant’s spouse also states that he has performed poorly in his studies for an advanced degree due to the stress of being separated from his spouse. The applicant’s spouse submitted a transcript from [REDACTED] illustrating that he achieved stellar grades in his coursework when he initially began his studies in 2006, but presently is barely passing his classes. The applicant’s spouse also claims hardship based on the difficulties that traveling to Nigeria to visit his wife is causing him. The applicant’s spouse states that he was targeted as an individual returning from the United States and as a result was robbed on two occasions during his visits to Nigeria. No independent evidence was provided to support these claims, but the AAO will take

administrative notice of the January 12, 2012 U.S. Department of State Travel Warning concerning Nigeria, which highlights violence targeted at U.S. citizens. The record, which includes a note from a doctor at [REDACTED] in Lagos, also indicates that the applicant's spouse contracted malaria and typhoid fever while visiting his wife in Nigeria. Additionally, the applicant's spouse states that he and the applicant have been attempting to conceive a child, but due to the applicant's health issues, it has not been possible to do so on his limited visits to Nigeria. The applicant states that this is creating an emotional hardship for him. In support of this claim the applicant's spouse provided documentation in his U.S. passport of his trips to Nigeria, as well as documentation of the applicant's surgery for uterine fibroids and her infertility treatments from [REDACTED] at [REDACTED] in Lagos, Nigeria. When looking at the aforementioned issues in the aggregate, particularly the emotional difficulties that separation would have upon the applicant's spouse, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to continue to reside in the United States without the applicant.

In regards to the hardship that the applicant's spouse would face if he were to relocate to his native Nigeria to reside with his spouse, the applicant's spouse states that he would suffer financial, educational, and emotional hardship. In regards to financial hardship, the applicant's spouse states that he supports himself, his wife, and his parents, as well as covers his mortgage in the United States and his student loans on his current income. He states that he would not be able to continue to do so in Nigeria. The record contains evidence of the applicant's spouse's income in the United States, his mortgage payment in the United States, and record of his father's health in Nigeria. As stated above, the record indicates that the applicant's spouse is a Licensed Practical Nurse in the United States and has been employed by the same hospital since December 5, 2005. The applicant's spouse cites the high unemployment rate in Nigeria as well as the difficulties he would have in obtaining the appropriate licensing to work in his field in Nigeria, as the basis for the financial hardship that he would suffer there. Additionally, the applicant's spouse states that his wife has been unable to obtain the appropriate infertility treatments in Nigeria and he is afraid that if he would have to join her in Nigeria, that they would never be able to conceive a child. The applicant's spouse states that culturally this would be "traumatic" for him. When looking at the aforementioned factors in the aggregate – in particular the applicant's spouses documented financial obligations in the United State, his consistent employment there as a Licensed Practical Nurse, and the country conditions in Nigeria – the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to relocate to Nigeria.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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)...

Id. at 301. The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The adverse factor in the present case is the applicant's misrepresentation for which she now seeks a waiver. The favorable and mitigating factors are the hardship to her United States citizen spouse should she not be admitted, her admission of her prior misrepresentation, and her lack of criminal record.

The AAO finds that, although the immigration violation committed by the applicant 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.