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: APR 0 2 2013 Office: INDIANAPOLIS FILE:

IN RE : Applicant:

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.

Thank you,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Cameroon, 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 procuring admission to the United States through fraud or misrepresentation. At her interview for a B-2 visitor visa the applicant stated she intended to visit a cousin when in fact she was visiting a male friend, and produced her marriage certificate without informing the consular officer she was at that time separated from her then-husband. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse.

The Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated May 24, 2012.

On appeal, the applicant contends in the Notice of Appeal (Form I-290B) that her statement to the U.S. consular officer was not material as she would have been issued a visa on the true facts; that she was not legally separated at the time; and that her spouse will suffer extreme hardship if he remains in the United States without her or if he relocates to Cameroon with her. With the appeal the applicant submits a statement from her spouse, medical documentation and a psychological evaluation for the applicant's spouse. The record also contains previous statements from the applicant's spouse; employment information, previous psychological evaluations, and medical information for the spouse; medical information for the spouse's mother; country information for Cameroon; and divorce documents for the applicant.

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.

Section 212(i) of the Act provides that:

> 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....

Prior to addressing whether the applicant qualifies for a waiver, the AAO will consider the issues related to the applicant's inadmissibility.

According to the Field Office Director, when the applicant was interviewed for a non-immigrant visa she failed to provide correct information regarding the purpose of her visit, thus cutting off a line of questioning when she misrepresented that she was coming to the United States to visit a cousin when in fact it was a male friend and that a letter from the applicant's friend, now husband, also indicated she was a cousin. The Field Office Director also found that the applicant had presented to the interviewing officer a copy of her marriage certificate and children's births certificates but did not state that she was separated from her husband at the time, also cutting off a line of questioning that may have altered the decision to grant her a B-2 visitor visa.

Based on this finding the Field Officer Director determined the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for misrepresentation.

On appeal the applicant contends that the officer could have still issued her a visa even on the true facts that she was visiting a male friend rather than a cousin as she was not his fiancé at that time and did not marry him until eight months later. The applicant also states that the visa form simply asked marital status including whether legally separated, and that although she was going through a divorce at that time it was not finalized until December 2008, so she was still legally married to her ex-husband at the time of the visa interview. The applicant further contends that she had dependent children as evidence of family ties to Cameroon which could have convinced the consular officer to issue her a visa. She also asserts that the consular officer could have asked about the state of her marriage.

The AAO notes that divorce documents in the record show the applicant's husband in Cameroon had abandoned her and their children in 2007 and that in November 2007 the applicant had already appealed to court for divorce. At the time of her September 2008 visa interview she not only was aware of being separated from her husband for more than one year but also that her divorce was nearly finalized, which happened shortly after her visa interview and subsequent travel to the United States. As the applicant contends that by showing her children's birth certificates could serve as evidence of ties to Cameroon she was clearly aware of the requirements, that a marriage certificate could serve the same purpose, and that stating she was separated from her husband and intending to visit a male friend in the United States could call into question the intentions of her visit to the United States.

The issue, therefore, becomes whether the applicant's failure to disclose information about her intended visit to the United States and the status of her marriage in Cameroon constitutes a willful misrepresentation of a material fact that would render him inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO concludes that the applicant's misrepresentation was willful.

Additionally, the misrepresentation committed by the applicant must be material. According to the Department of State's Foreign Affairs Manual, a misrepresentation 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 that is relevant to the alien's eligibility and that might well have resulted in a proper determination that he be excluded. 9 FAM 40.63 N61.

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 US 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) and *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961).

The AAO finds the applicant's misrepresentation to be material as the facts about her marital situation and that she was intending to visit somebody who was not a relative would have led to additional questions from the consular officer relevant to her eligibility and had an effect on the determination.

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 spouse 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. *Salcido-Salcido v. INS*, 138 F.3d 1292 (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 his statement the applicant's spouse indicates that he sees a psychologist to treat his depression and that he experiences sleeplessness, loss of appetite, inability to cope with work, vomiting, weight gain, sneezing, coughing, and overall fatigue due to constant worries. The spouse stated due to the applicant's immigration problems he has constant worry that led to losing his normal voice and self-esteem so that he cannot make work presentations. He states that he is not getting better opportunities at his employment because cannot interview well, believing depression and an inability to focus contribute to poor performance and not being selected. He states that friends attest to his depression and that he takes anti-depressant medication.

The applicant's spouse states he recently had surgery on his hand and the applicant provides emotional support, helps cope with post-surgery restrictions and with transportation for doctor visits, therapy and medication, and gives assistance in day to day activities. The states he has back pain due to an auto accident that also injured his daughter and that he needs the applicant for emotional support especially with the children.

The spouse stated that with the purchase of their home and increased payments the applicant's income contribution is needed.

The spouse states his medical care is covered by insurance in the United States, but if he relocated to Cameroon he would be unable to pay costs of surgery and would lose insurance benefits. He further states that Cameroon has a poor health system with a shortage of doctors and hospitals require immediate payments in cash. He fears the children will suffer from the poor medical system there since they were born in United States and their education in Cameroon would suffer unless they attend expensive private schools. He further states that his job prevents him from having ties to other countries so trips abroad to meet the applicant would have to be reported to maintain his security clearance, but that his job skills are not transferable to Cameroon if he were to relocate. He also states there would be a huge cost to travel to visit the applicant in Cameroon.

The spouse states that his mother recently immigrated to the United States as a permanent resident and is being treated for Hepatitis C. He states that she does not speak English, depends on him to go to the doctor and grocery shopping since she does not drive, and also depends on him financially. He states that he would be unable help if he relocated to Cameroon and that Cameroon does not recognize dual nationality if he mother were to relocate with him, thus she would lose her U.S. permanent residence and not become a U.S. citizen.

The medical report shows the applicant's spouse had a procedure performed on his left elbow and was discharged in good condition with standard instructions and medications and it shows that he tolerated treatment without difficulty. Another medical document from the applicant's physician identifies chronic allergic rhinitis, depression, and exogenous obesity. The physician recommended increased exercise and weight reduction, encouraged follow up with the psychologist, and medication.

The mental health assessment indicates the applicant's spouse reported symptoms of depression and anxiety because he worried about the applicant and fears separation due to deportation. He indicated he has fears concerning his ability to care for his own mother and children if the applicant is removed as she is the primary caretaker. The mental health assessment offers the opinion that the applicant's spouse suffers depression and anxiety with the trigger appearing to be the applicant's immigration status and a paralyzing fear she will be separated from the family. A previous assessment summarized that the applicant's removal would cause extreme emotional hardship to the applicant's spouse.

The AAO finds that the record establishes the applicant's spouse will experience extreme hardship if he were to remain in the United States while the applicant resides abroad due to her inadmissibility. The applicant's spouse states he suffers depression making him physically ill and causing poor performance at work and that he fears being able to care for his own mother and children without the applicant. Psychological evaluations and an assessment from a medical doctor reference the spouse suffering from depression and anxiety due to the applicant's immigration problems that is causing a paralyzing fear of separation. Medical documentation submitted to the record establishes that the

applicant's spouse had elbow surgery and has back pain resulting from an auto accident, requiring several months of recovery during which time he needs the applicant's support with their children.

The AAO further finds that the record establishes that the applicant's spouse would experience extreme hardship if he were to relocate abroad to reside with the applicant. The record shows that the applicant's spouse would be sacrificing career employment and a home in the United States to relocate to Cameroon, where the U.S. State Department reports that Cameroon considers U.S. citizens of Cameroonian descent to have lost their Cameroonian citizenship and officials could be hostile regarding their changed citizenship. The State Department also reports that the risk of street and residential crime is high with incidents often involving gangs, home invasion, and kidnapping. The record further establishes that if he relocated the applicant's spouse would be leaving his mother who is receiving treatment for a serious medical condition, thus causing emotional hardship to the applicant's spouse.

The record further establishes that the applicant's children are natives and citizens of the United States. The Board of Immigration Appeals (BIA) found that a fifteen year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of Kao and Lin* to be persuasive in this case due. According to the Department of State Cameroon has a very high incidence of malaria, diarrheal diseases including cholera, and tuberculosis. The report further states that medical facilities are extremely limited and that emergency care for major illnesses is hampered by the lack of trained specialists, outdated diagnostic equipment, and poor sanitation. It goes on to state that medical services in outlying areas may be completely non-existent. The State Department also reports that a low school enrollment rate was attributed to cost, with girls' participation further reduced by events including sexual harassment and prejudice. To relocate the applicant's children to Cameroon with substandard medical care and limited education as documented by country information would constitute extreme hardship to them, and by extension, to the applicant's spouse, the qualifying relative in this case. Alternatively, were they to remain in the United States, the applicant's spouse would experience hardship due to long-term separation from his children

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the circumstances presented in this application rise to the level of extreme hardship.

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 section 212(h)(1)(B) 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 for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion 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 favorable factors in this matter are the hardships the applicant's United States citizen spouse and children would face if the applicant is not granted this waiver, the applicant's support from her spouse, his family and their friends in the United States, and her apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's misrepresentation to procure entry to the United States.

Although the applicant's violation of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violation of immigration law, the AAO finds that a favorable exercise of discretion is warranted. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.