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U.S. Citizenship
and Immigration
Services

Date: **APR 08 2013** Office: ACCRA, GHANA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting 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 dismissed.

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact in order to obtain a U.S. immigration benefit. The record indicates that the applicant is the son of a U.S. citizen and is the father of two Nigerian citizen children. He 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, 8 U.S.C. § 1182(i), in order to reside in the United States with his father.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated November 4, 2011.

On appeal, the applicant claims that his father suffers from various medical conditions and is suffering extreme hardship. *Form I-290B, Notice of Appeal or Motion*, dated December 7, 2011. Additionally, he admits that there was an error in his passport regarding his birthdate but he claims it was not his fault, and he should not "be made the scape goat." *Id.*

The record includes, but is not limited to, a statement from the applicant's father, medical documents for the applicant's father, business documents, mortgage documents for the applicant's sister's property, and financial documents. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

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

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

- (1) The [Secretary] may, in the discretion of the [Secretary], 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 resident spouse or parent of such an alien.

A waiver of inadmissibility under section 212(i) of the Act is dependent first 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's father 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 United States Citizenship and Immigration Services (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 of Immigration Appeals (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. INS*, 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 the present case, the record indicates that in 2003, while applying for a nonimmigrant visa, the applicant provided a passport with a birthdate of December 27, 1969. His nonimmigrant visa application was denied. In 2011, he again applied for a nonimmigrant visa, providing a different passport with a birthdate of December 27, 1975. He claimed that December 27, 1975 was his correct birthdate and he did not provide an explanation for the discrepancy in birthdates. The record includes documents, including the applicant's birth certificate, his father's divorce decree, and his approved petition for alien relative, which establish that his birthdate is December 27, 1975.

On appeal, the applicant admits that his first passport listed the wrong birthdate; however, he claims that he was unaware of the error and it was the fault of the Nigerian authorities. He states that he has attempted to correct this mistake for years as established by his birth certificate and other documents showing his correct birthdate.

In order for the applicant to be inadmissible under section 212(a)(6)(C) of the Act, the applicant's misrepresentations not only must be willful, but they must be material. A misrepresentation is generally material only if by making it the alien received a benefit for which he would not otherwise have been eligible. See *Kungys v. United States*, 485 U.S. 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). A misrepresentation must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, which is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys*, 495 U.S. at 771-72. The Board has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, 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 which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

“It is not necessary that an ‘intent to deceive’ be established by proof, or that the officer believes and acts upon the false representation,” but the principal elements of the willfulness and materiality of the stated misrepresentations must be established. 9 FAM 40.63 N3 (citing *Matter of S and B-C*, 9 I&N Dec. 436, 448-449 (A.G. 1961) and *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975)).

In regards to the willfulness of the applicant’s stated misrepresentation, 9 FAM 40.63 N5, in pertinent part, states that:

The term “willfully” as used in INA 212(a)(6)(C)(i) is interpreted to mean knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately made an untrue statement.

Additionally, “materiality” is defined in 9 FAM 40.63 N6.1, which states, in pertinent part, that:

Materiality does not rest on the simple moral premise that an alien has lied, but must be measured pragmatically in the context of the individual case as to whether the misrepresentation was of direct and objective significance to the proper resolution of the alien's application for a visa. The Attorney General has declared the definition of “materiality” with respect to INA 212(a)(6)(C)(i) to be as follows: “A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either: (1) The alien is inadmissible on the true facts; or (2) The misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he or she be inadmissible.” (*Matter of S- and B-C*, 9 I & N 436, at 447.)

Even though the applicant’s nonimmigrant visa application was denied, the applicant attempted to obtain an immigration benefit, a nonimmigrant visa, through the misrepresentation of his date of birth. Although he claims that the error in his passport was the fault of the Nigerian authorities, he does not dispute that he presented the passport to a U.S. consular officer in an attempt to obtain a nonimmigrant visa. Additionally, it is the applicant’s responsibility to know and understand what information is contained in the documents he submits to an immigration officer. Moreover, during his consular interview in 2011, he could not explain the discrepancy in the dates of birth nor did he provide the first passport for inspection. The U.S. consular officer also noted that the passport submitted in 2011 was issued in 2001, and the applicant did not provide an explanation of why he used the passport with the incorrect birthdate in 2003 instead of his passport with the correct birthdate. Therefore, the applicant’s misrepresentations were willful and material, and based on these misrepresentations, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO notes that the Field Office Director determined that the applicant established that his U.S. citizen father would experience extreme hardship if he were to join the applicant in Nigeria. The AAO affirms the

Field Office Director's previous finding with respect to the extreme hardship that would be imposed on the applicant's father in Nigeria.

Concerning the applicant's father's hardship in the United States, the applicant claims that his father suffers from medical conditions and he has postponed surgery on his ankle until the applicant could join him in the United States. Medical documentation in the record establishes that the applicant's father is being treated for type 2 diabetes, hypertension, hyperlipidemia, and peripheral vascular disease. However, no documentary evidence was submitted showing that the applicant's father currently requires surgery on his ankle. In his letter dated June 25, 2011, the applicant's father claims that when his house caught fire twelve years ago, he jumped from the third-story window, and he injured his feet. He states that he has been "in and out of the hospital" because he broke his feet, and he also has problems with his eyesight. Medical documents in the record show that the applicant's father had surgeries on his feet in 1998 and 1999.

The applicant's father states he owns a real estate business but he is having difficulty running his business because of his medical conditions. He states that he needs the applicant to help him with his business and to help take care of him. The applicant states his siblings in the United States cannot help take care of their father because his two sisters reside in Tennessee and his brother, who resides with their father, is joining the Marines. Documents in the record establish that the applicant's youngest sister purchased property in Tennessee and her twin children were born there. However, no documents were submitted showing that the applicant's other sister is attending university in Tennessee or that his brother joined the Marines and no longer resides with their father.

With respect to the applicant's father's medical hardship, although the record establishes that he suffers from medical issues, the medical documentation in the record does not establish that separation from the applicant elevated his symptoms or that he requires the applicant's assistance because of his medical conditions. Additionally, though the applicant's father refers to financial difficulties, the record does not contain evidence showing that he is unable to support himself in the applicant's absence. Going on record without supporting evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Based on the record before it, the AAO finds that the applicant has failed to establish that his father would suffer extreme hardship if his waiver application is denied and he remains in the United States.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige, supra* at 886. Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, see also *Matter of Pilch, supra* at 632-33. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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In proceedings for application for waiver of grounds of inadmissibility under section 212(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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.