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 2 6 2013 Office: COLUMBUS, OHIO FILE:

IN RE:

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:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Columbus, Ohio. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted and the waiver application will be approved.

The applicant is a native and citizen of the Republic of Benin 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 into the United States by fraud or the willful misrepresentation of a material fact. 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, 8 U.S.C. § 1182(i), to live with his U.S. citizen spouse.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director,* dated October 6, 2011. On appeal, the AAO concurred with the Field Office Director that extreme hardship to a qualifying relative had not been established, as required by the Act. Consequently, the appeal was dismissed. *See Decision of the AAO,* dated January 7, 2013.

On motion, the applicant's attorney asserts that substantial new evidence shows that the applicant should be granted a waiver of inadmissibility based on his qualifying spouse experiencing extreme hardship upon her separation from him and her relocation to Benin.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Counsel on motion asserts that the applicant's qualifying spouse will face extreme hardship if the waiver is not granted and he provided new evidence detailing her circumstances. The evidence submitted on motion includes, but is not limited to, a brief written on behalf of the applicant, additional affidavits, financial documentation and documentation relating to country conditions in Benin. The AAO will grant the motion to reopen the proceedings and consider the new documentation submitted in support of the motion to reopen.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); Notices of Appeal or Motion (Forms I-290B); affidavits from the qualifying spouse and applicant; relationship and identification documents for the applicant and qualifying spouse; divorce documentation regarding the qualifying spouse's prior spouses; medical documentation regarding the qualifying spouse; financial documentation; documents responding to the Notice of Intent to Deny the Form I-130; photographs; an Application to Register Permanent Residence or Adjust Status (Form I-485) and an approved Form I-130. In support of the instant motion, the applicant submits a brief; affidavits from the qualifying spouse, her mother, her son and the applicant; the qualifying spouse's school records from high school; birth certificates for the qualifying spouse's children; a death certificate for the father of the qualifying spouse's children; a letter from the applicant's employer; proof of insurance for the applicant and qualifying spouse; financial documentation and country condition materials regarding Benin. The entire record was reviewed and considered in rendering this decision.

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.

The record indicates that the applicant claimed to be married to the mother of his child, on his nonimmigrant visa application, which he signed on November 25, 2008. However during his September 21, 2011 interview with U.S. Citizenship and Immigration Services (USCIS) to adjust status, the applicant denied that he was married in Benin and also denied that he claimed to be married on his nonimmigrant visa application.

In this case, the applicant's misrepresentation of his marital status on his nonimmigrant visa application constitutes a material misrepresentation under the Act. Accordingly, the applicant obtained an immigration benefit through the willful misrepresentation of a material fact and is barred from admission to the United States under section 212(a)(6)(C)(i) of the Act. The applicant's attorney does not contest his inadmissibility on motion.

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

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the [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 [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 includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's wife 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 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*, 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.

On motion, the qualifying spouse states that she would suffer financial hardships upon her separation from the applicant because of her own inability to hold a job due to her learning disability and psychiatric problems. Although the AAO considered the qualifying spouse's financial hardships upon separation on appeal, the record contained no documentation to demonstrate that the applicant financially contributes to the qualifying spouse or his step-children or to show that he earned any income. However, on motion, the applicant submitted additional financial documentation

confirming his income and his contributions to the applicant's expenses including her rent, utilities and health insurance. The qualifying spouse's issues with supporting herself was documented through evidence, including, but not limited to, an affidavit from her mother confirming her inability to hold a job and her parents prior financial support for her. The new evidence on motion demonstrates that the applicant's spouse relies significantly upon the applicant's financial support, and that her and her youngest son, who lives with the applicant and qualifying spouse, would suffer financially without the his assistance. With regard to her emotional hardships, the motion contained a more detailed affidavit from the qualifying spouse, as well as one from her mother and youngest son, providing additional insight into the qualifying spouse's psychiatric problems, her prior abusive relationships and her reliance upon the applicant's emotional, as well as financial, support. In addition, the record reflects that, as a result of the qualifying spouse's learning disability, which was confirmed by evidence on motion, she also relies upon the applicant to take care of many household tasks including cooking and shopping. Considering the applicant spouse's financial and emotional hardships in the aggregate, the AAO concludes that she would experience extreme hardship due to her separation from the applicant.

The AAO also found that the applicant had not met his burden of showing that his qualifying spouse would suffer extreme hardship if she relocated to Benin to be with him. The AAO indicated that the applicant failed to sufficiently document the counsel's assertions regarding the qualifying spouse's family ties to the United States. However, on motion, the applicant provided documentation indicating that his spouse has two U.S. citizen children, one of which lives with them, and two adoptive parents with which she maintains a close relationship. On motion, the qualifying spouse also indicates in her supplemental affidavit that she believes that it would be difficult for her to adjust to living in Benin because she has never traveled outside of the United States, does not know the language or understand the culture. In addition, she notes that, due to her learning disability, she feels that she would not be able to learn the language and fears that she would be isolated and lonely. On motion, documentation was provided to confirm the qualifying spouse's learning disability and her potential issues with learning the language in Benin. The applicant's spouse was also born and has lived her entire life in the United States. The applicant's attorney also asserts on motion that the qualifying spouse will encounter safety concerns living in Cotonou, Benin, where the applicant and qualifying spouse would live. Country-conditions documentation and the most recent U.S. Department of State Country Specific Information for Benin support these assertions. The AAO therefore concludes that, considering her length of residence in the United States, her family ties, her potential difficulties adjusting to life in Benin and country conditions in Benin, the qualifying spouse would suffer extreme hardship if she relocated there to be with the applicant.

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 Board 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 Board 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 extreme hardships the applicant's United States citizen spouse would face if the applicant is not granted this waiver, regardless of whether she accompanied the applicant or remained in the United States, his apparent lack of a criminal record and his financial support to the qualifying spouse and her family. The unfavorable factor is the applicant's misrepresentation regarding his marital status.

Although the applicant's immigration violation is serious and cannot be condoned, the positive factors in this case outweigh the negative factors. The AAO therefore 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 motion will be granted, the previous decision withdrawn and the waiver application approved.