

(b)(6)



**U.S. Citizenship
and Immigration
Services**

[REDACTED]

Date: **FEB 08 2013**

Office: PHILADELPHIA, PA

FILE: [REDACTED]

IN RE: [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:
[REDACTED]

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of the Ivory Coast 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 misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with her U.S. citizen spouse and child.

The Field Office Director concluded that the applicant failed to establish that a bar to her admission to the United States would result in extreme hardship to her qualifying spouse and denied the application accordingly. *See Decision of the Field Office Director*, dated October 21, 2011.

On appeal, the applicant's attorney asserts the Field Office Director erred as a matter of law and fact in denying the applicant's waiver application. The applicant's attorney also states that the applicant demonstrated that her qualifying spouse would suffer extreme hardship upon her removal from the United States.

The record contains the following documentation: the Application for Waiver of Grounds of Inadmissibility (Form I-601); the Notice of Appeal or Motion (Form I-290B); a brief and letters from the applicant's attorney; an article regarding the salaries of social workers; relationship and identification documents for the applicant and qualifying spouse; financial documentation; medical documentation regarding the applicant; letters and affidavits from the qualifying spouse, applicant and friends; photographs; academic documentation regarding the qualifying spouse; country-conditions documents about the Ivory Coast; the applicant's approved Petition for Alien Relative (Form I-130) and an Application to Register Permanent Residence or Adjust Status (Form I-485). 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:

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 husband 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-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).

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.

The record indicates that the applicant presented a fraudulent French passport to procure admission into the United States on January 22, 2001. Therefore, as a result of the applicant's misrepresentation, she is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. Counsel does not contest the applicant's inadmissibility.

The AAO finds that the applicant has established that her spouse would suffer extreme hardship as a consequence of being separated from her. With respect to his emotional hardship, the qualifying spouse states that he is stressed and frightened at the thought of the applicant returning to the Ivory Coast. He describes the recent political and social upheaval there and asserts that the "horrors facing her are real" in the Ivory Coast; he does not want her to leave the United States where she is "safe." Further, he recalls his childhood the Ivory Coast and "witnessing many criminal activities." Country-conditions documentation corroborates his concerns regarding the applicant's safety. Moreover, the record contains medical documentation confirming that the applicant underwent female genital mutilation at a young age. The applicant also states that she was raped as a child, that her father forcibly attempted to have her marry her cousin and that she attempted suicide in the Ivory Coast. Considering the country conditions in the Ivory Coast and the prior problems that the applicant endured there, it appears that the applicant's spouse would face emotional hardship, fearing for the applicant's safety and well-being if they were separated. Moreover, he states that as a social worker, he has seen many children grow up separated from their parents and that he could not "bear to raise [their] son without a mother." He adds that he could not provide child care to their son without the applicant's help; doing so would require him to either stop working or stop pursuing his advanced degree. The applicant's spouse also indicates that he would not be able to afford to travel to the Ivory Coast to visit the applicant, given his salary and financial responsibilities. The record contains documentation regarding his income and debts that support his concerns. Considering the applicant spouse's emotional hardships and his financial constraints in the aggregate, the AAO concludes that he would experience extreme hardship due to his separation from the applicant.

The applicant also demonstrated her qualifying spouse would suffer extreme hardship in the event that he relocated to the Ivory Coast with her. The qualifying spouse has lived in the United States for almost twenty years and has two U.S. citizen children in the United States. Evidence in the record shows that he is completing his dissertation for his doctorate in business administration and that he works as a social worker for two organizations. The record also documents the qualifying spouse's financial responsibilities, including owing nearly \$40,000 in student loans. Moreover, the applicant's spouse indicates that he fears returning to the Ivory Coast because, having been away many years, he believes he would be targeted as a foreigner. Country-conditions documentation and the most recent U.S. Department of State Travel Warning for the Ivory Coast support the applicant's spouse's assertions. The AAO therefore concludes that, considering his length of residence in the United States, family ties, financial obligations, career hardship and country conditions in the Ivory Coast, the qualifying spouse would suffer extreme hardship if he returned 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 section 212(i) 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 applicant's U.S. citizen family members, the extreme hardship the applicant's U.S. citizen spouse would face if the applicant is not granted this waiver whether he accompanied her or remained in the United States, and her lack of a criminal record. The unfavorable factor in this matter is the applicant's use of a fraudulent passport to procure admission to the United States in 2001.

Although the applicant's violation of immigration laws cannot be condoned, the applicant's misrepresentation occurred over 10 years ago and the positive factors in this case outweigh the negative factors. 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 her burden and the appeal will be sustained.

ORDER: The appeal is sustained.