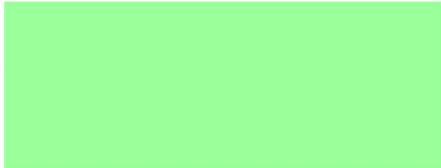




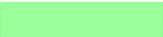
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JAN 10 2013**

Office: ACCRA, GHANA

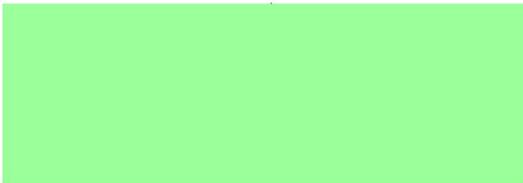
FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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, Accra, Ghana. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the underlying waiver application will be approved.

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 Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and children in the United States.

The field office director found that although the applicant's husband would suffer extreme hardship if he relocated to Nigeria with the applicant, he would not experience extreme hardship if he decided to remain in the United States. The field office director denied the waiver application accordingly. The AAO dismissed a subsequent appeal, also concluding that although the applicant's husband would suffer extreme hardship if he relocated to Nigeria, he would not experience extreme hardship if he remained in the United States.

The applicant filed a motion to reopen and reconsider contending that there is new evidence to show extreme hardship. Specifically, counsel contends that the couple's son was recently diagnosed with autism and that the applicant's husband is suffering extreme hardship as a result of separation from his wife.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, counsel has submitted a brief and new documentary evidence to support the applicant's waiver application. The applicant's submission meets the requirements of a motion to reopen. Accordingly, the motion is granted.

The record contains, *inter alia*: letters from the applicant's husband, [REDACTED]; documentation from the couple's child's school; an autism assessment of the couple's child; a letter from [REDACTED] mother's physician and copies of her medical bills; copies of Mr. [REDACTED] bills; a psychological evaluation; letters of support; a copy of the U.S. Department of State Human Rights Report for Nigeria and other background materials; copies of photographs of the applicant and her family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

In general.—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) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien

In this case, the record shows, and the applicant does not contest, that she submitted applications for nonimmigrant visas in August 2002, April 2003, and July 2003 using other people's identities. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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-I-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, counsel contends that new evidence supports a finding of extreme hardship. Counsel states that the couple’s son has special needs and that documentation from the child’s school show that the son needs his mother’s help. According to counsel, the applicant’s husband, [REDACTED] cannot take care of his elderly mother while single-handedly caring for his children and running his own business.

A statement from [REDACTED] states that he and his wife have three children together. He states that their six-year old son and nine-year old daughter were granted visas, so he brought them to the United States and is raising them by himself while his wife is raising their three-month old newborn in Nigeria. He states his children have never been separated from their mother before and cry for her. According to [REDACTED] he has a history of anxiety and migraines, and has never been under such heavy stress and mental anguish as he is now. He states that in addition to caring for his children, his eighty-three year old mother has been living with him since 2005. He states she is not in good health and that his day-to-day life is almost impossible because he works more than forty

hours per week. [REDACTED] states that he started his own fashion business with his life savings as well as money he borrowed from friends. He contends he has been unable to keep up with his expenses and that he sends money to his wife in Nigeria. He contends that if his wife's waiver application is not granted, he will suffer an emotional breakdown. Furthermore, [REDACTED] states that if he returns to Nigeria to be with his wife, he would have to close down his business, would be unable to pay back his friends, and his life would be completely destroyed as he left Nigeria twenty years ago. He states that all of his family and close friends live in the United States. He also contends he is concerned about the uncontrollable crime everywhere in Nigeria, particularly kidnapping, a big problem for individuals who have lived in the United States.

After a careful review of the entire record, the AAO stands by its previous finding that if [REDACTED] returned to Nigeria to be with his wife, he would suffer extreme hardship. With respect to remaining in the United States, the AAO finds that if [REDACTED] decides to remain in the United States without his wife, he would suffer extreme hardship. The additional evidence submitted with the motion contains ample evidence showing that the couple's son, [REDACTED] has been diagnosed with Autism. A copy of his Individual Evaluation Disability Report as well as an Autism Assessment Summary Report show that Isaac has been referred to Special Education due to Autism, Specific Learning Disability, and Speech Impairment. He reportedly has great difficulty expressing himself, repeats himself, talks off point, becomes angry quickly, struggles with directions, and struggles to put words together to make sentences. His language deficit is described as severe. In addition, Isaac reportedly did not recognize facial expressions, demonstrated unusual physical movements, and had a "flat affect." According to [REDACTED] teacher, although [REDACTED] is doing the best he can as a single parent, [REDACTED] needs additional support and struggles in all academic subjects. Moreover, the AAO acknowledges [REDACTED] contention that his elderly mother has been living with him since 2005. New evidence submitted with the motion includes letters from his mother's physician and a social worker stating that [REDACTED] mother is eighty-five years old, had been in the hospital where she was dependent on a ventilator, and was discharged to go home under hospice care. According to the social worker, she has been diagnosed with acute respiratory failure, a terminal condition, and is currently nonresponsive, bedbound, and requires 24-hour care. Furthermore, newly submitted documentation shows that [REDACTED] mother was uninsured and shows that [REDACTED] is behind in paying his bills to the extent that his water service and electricity were threatened to be shut off, substantiating [REDACTED] contention that he has been unable to keep up with his expenses while sending money to his in Nigeria. Considering these unique circumstances cumulatively, the AAO finds that the hardship [REDACTED] would experience if he remained in the United States without his wife is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case includes the applicant's misrepresentation of a material fact to procure an immigration benefit on three separate occasions. The favorable and mitigating factors in the present

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case include: the applicant's family ties to the United States, including her U.S. citizen husband and two lawful permanent resident children; the hardship to the applicant's entire family if she were refused admission; letters of support for the couple; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violations are 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.

ORDER: The motion will be granted and the underlying waiver application is approved.