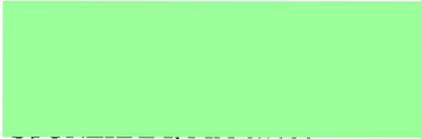


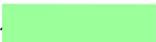


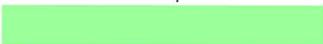
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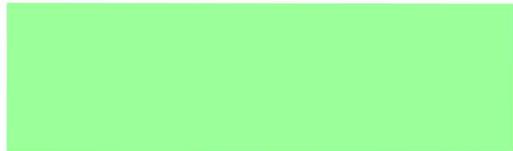
Office: ACCRA

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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, Accra, Ghana. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal is sustained. The waiver application is approved.

The applicant is a native and citizen of Nigeria. The record indicates that in 2005, when the applicant applied for a visa, the passport she presented indicated that she was born on June 26, 1968, when in reality she was born on June 26, 1975. The applicant was thus found to be inadmissible 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 having attempted to procure a nonimmigrant visa by fraud and/or willful 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 reside in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to establish that a bar to her admission to the United States would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Inadmissibility, accordingly. *See Decision of the Field Office Director* dated December 1, 2011.

In support of the appeal, counsel for the applicant submits the following: a brief; copies of cases referenced in the brief; a statement from the applicant's spouse; biographic, financial, employment and medical documentation; and information about country conditions in Nigeria. 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:

- (1) 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 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 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....

On appeal, counsel asserts that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act because her misrepresentation with respect to her age was not material or willful. To

begin, counsel notes that at the time of the misrepresentation, the applicant's actual date of birth would be approximately thirty years of age, while her age based on the alleged misrepresentation would have been thirty-seven years of age. Counsel contends that the age difference does not result in a distinction between an individual who is a minor versus an adult. Nor does it amount to a person who would be viewed as a young adult versus a middle-aged person and thus, this age difference, counsel maintains, does not present subjective factors that USCIS should inquire further into that are determinative of issuing a visa. Counsel goes on to state that date of birth is one of various biographic factors for any specific individual and regardless of date of birth, a consular officer is still likely to inquire as to the length and purpose of a visit, family ties, financial considerations, and most significantly, into other possible grounds of inadmissibility. Thus, counsel maintains, the alleged misrepresentation as to date of birth would not have shut off a line of inquiry that is sufficiently relevant to the alien's eligibility as to result in a determination of exclusion. A truthful response as to the applicant's date of birth, counsel concludes, would not have resulted in a denial in that she is not excludable based on her date of birth. *Brief in Support of Appeal*, dated January 25, 2012. Thus, counsel maintains that the applicant's misrepresentation was not material.

Counsel further notes that the applicant's misrepresentation was not willful. Counsel notes that the applicant is from Ughelli, approximately 200 miles from Lagos, very limited in terms of access to utilities and particularly government agencies. As a result, counsel asserts that it leads to heavy reliance on other individuals who present themselves as having information and access to consular information. In this instance, the applicant relied on an individual named '██████' and when ██████ gave her the passport, the applicant "joined the line without noticing the wrong date of birth" on her passport due to her tardiness. Once the applicant realized the error in her biographic information on her passport, she took the steps she deemed appropriate by pursuing the necessary procedures as required by the passport office to rectify the error. *Id.* at 5. Thus, counsel concludes, the applicant's misrepresentation was not willful.

In her own words, the applicant details the misrepresentation:

In 2005, I met a friend who introduced me to a man named ██████ whom they said could help get an interview date for me at the U.S. Embassy. He asked me to give him my information to help me get a Nigerian passport which I did. He later called me that my passport was ready and that we should meet at the embassy on the 5th of May, 2005 for that was my appointment.

On the said date, I got there late, so I hurriedly collected the passport from him and joined the line without noticing the wrong date of birth. I went inside and the man at the counter told me I was not qualified. I was surprised and asked him why? He did not respond, he stamped my passport and gave it to me. On getting outside, I opened my passport wondering why I was denied without an interview, then I noticed that my date of birth was wrong (the year).

(b)(6)

I then went to the passport office with the hope of rectifying the mistake, they told me there is nothing they could do at that point and that I should go and swear an affidavit stating the mistake and that will validate the passport, which I did....

When the time came for the e-passport, I applied for that which came out well and I then cancelled the former which misrepresented my date of birth....

See Form I-601, dated July 21, 2011.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

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 which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

To establish eligibility for a non-immigrant B1/B2 visa, section 101(a)(15) of the Act states, in pertinent part:

- a. an alien...having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

The Department of State's Foreign Affairs Manual further provides:

The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.

DOS Foreign Affairs Manual, § 41.31 N. 3.4.

The AAO finds that the applicant's misrepresentation with respect to her age was not a material misrepresentation. The record does not establish that presenting herself as being thirty-seven shut off a line of inquiry in terms of her ties to Nigeria. Despite the age, the applicant would have still been required to demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations to Nigeria, to indicate a strong inducement to return to her country of origin. Nor does the AAO find that the applicant's misrepresentation was willful as she immediately attempted to rectify the error when she learned of the mistake, by submitting an affidavit detailing her actual date of birth to the Commissioner for Oaths, High/Magistrate Court of Lagos State, on June 8, 2005.

Nevertheless, the AAO finds that the applicant remains inadmissible under section 212(a)(6)(C) of the Act based on her misrepresentation with respect to her intentions when she applied for a nonimmigrant visa in 2005. The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Notes in the record indicate that in May 2005, when applying for a nonimmigrant visa, the applicant stated that she intended to travel to the United States to attend her cousin's wedding. Her request for a nonimmigrant visa was denied. In April 2011, the applicant admitted that she did not have any cousins in the United States and that her fiancé had arranged for a nonimmigrant visa and the purpose of her trip to the United States was to reside with him. As such, the applicant remains inadmissible under section 212(a)(6)(C)(i) of the Act based on her misrepresentations with respect to her purported intentions upon entering the United States with a nonimmigrant visa.

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 U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. 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 applicant's U.S. citizen spouse contends that he will suffer hardship were he to relocate to Nigeria to reside with the applicant due to her inadmissibility. To begin, the applicant explains that he fled Nigeria based on threats on his life and physical beatings he received as a result of his work as a pharmacist superintendent working on behalf of a consulting firm. He consequently sought, and

was granted, asylum in the United States. As such, the applicant's spouse contends that he would experience hardship were he to return to Nigeria as he would be exposed to the same dangers. In addition, he notes that conditions in Nigeria, most notably in in the Delta State, where the applicant resides, are dangerous and his life would be at risk. Further, the applicant's spouse details the lack of gainful employment opportunities in Nigeria. Finally, the applicant's spouse references the problematic educational and health care system in Nigeria and his concerns for his children's welfare were they to reside in Nigeria permanently. *Statement in Support of Form I-290B*, dated January 24, 2012.

Based on a totality of the circumstances, most notably the applicant's spouse's past traumatic experiences in Nigeria and his subsequent asylum approval in the United States and in light of the Travel Warning issued by the U.S. Department of State with respect to Nigeria, and in particular, the applicant's home state of Delta,¹ the AAO concludes that it has been established that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

With respect to remaining in the United States while the applicant continues to reside abroad due to her inadmissibility, the applicant's spouse explains that he needs his wife to reside in the United States as long-term separation from her is causing him emotional hardship. To begin, the applicant's spouse explains that his son, born in 2006 is currently residing with him in the United States as a lawful permanent resident while his daughter, born in 2011, is residing in Nigeria with her mother and such an arrangement is causing him hardship. He notes that he is dedicated to preserving his family and the cost of long-term separation is forcing him to sacrifice his health and well-being. He explains that although he travels to Nigeria as often as he can with his son to visit the applicant and his daughter, he is now unemployed and unable to find employment and he can thus not afford to travel abroad. He explains that he has applied for unemployment and is barely making ends meet. The applicant's spouse details that were his wife and child to live in the United States, he would be able to pursue any and all employment opportunities, without worrying who would care for the children or how he would cover the costs of the children's care while he is away. Finally, the applicant's spouse details that as a result of long-term separation from his wife, he is feeling severe anxiety which is causing him to have trouble functioning every day. *Supra* at 3-5.

To begin, evidence has been provided establishing that the applicant's spouse is unemployed and is receiving unemployment checks from the Massachusetts Department of Workforce Developments. Copies of bills owed by the applicant's spouse and wire transfers he has made to Nigeria to assist his wife financially have also been provided. Further, numerous letters to the applicant's spouse confirming that there are no employment opportunities in their organization have been submitted. Moreover, documentation establishing the costs of obtaining a caregiver for his son after school has been submitted by counsel. Finally, documentation has been provided establishing that the applicant's spouse has been prescribed Ativan, a medication to treat anxiety. *See Progress Note from* [REDACTED] *NP*, dated November 1, 2011.

¹ *See Travel Warning-Nigeria, U.S. Department of State*, dated December 21, 2012.

Due to the applicant's inadmissibility, the applicant's U.S. citizen spouse has had to assume the role of primary caregiver and provider to one child, while his other child remains in Nigeria with her mother, and such an arrangement is causing him emotional and financial hardship. The applicant has established that he needs his wife on a day to day basis, to help with the care of their children and to provide daily physical and emotional support. A prolonged separation at this time would cause hardship beyond that normally expected of one facing the removal of a spouse.

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 situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardship the applicant's spouse and son would face if the applicant were to remain in Nigeria, regardless of whether they accompanied the applicant

or remained in the United States, the apparent lack of a criminal record and the passage of more than seven years since the applicant's fraud or willful misrepresentation. The unfavorable factor in this matter is the applicant's fraud or willful misrepresentation, as outlined in detail above.

The immigration violation committed by the applicant is serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factor. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The application is approved.