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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

U.S. Citizenship and Immigration Services

H6

[redacted]

Date: NOV 29 2011 Office: ACCRA, GHANA 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) and under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B).

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,

Michael Shumway

Perry Rhew
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 will be sustained.

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, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation in February 1991. The applicant was also found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. In her decision, dated July 24, 2008, the field office director not only found the applicant inadmissible under the above stated grounds related to an Application for Waiver of Grounds of Excludability (Form I-601), but also found the applicant to be inadmissible under section 212(a)(7)(A) of the Act, 8 U.S.C. § 1182(a)(7)(A), for not being in possession of a valid entry document and section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i), as an alien entering the United States for the purpose of performing skilled or unskilled labor without a labor certification. In her decision, the field office director finds that the applicant's departure from the United States triggered a fifth inadmissibility under section 212(a)(6)(B) of the Act, § 1182(a)(6)(B), as an applicant who departs the United States after failing to attend removal proceedings and seeks reentry within five years of this departure. Finally, the field office director found that the applicant failed to establish that extreme hardship would be imposed on her qualifying relative and denied the Form I-601 accordingly.

The record indicates that the applicant is married to a United States citizen, has four U.S. citizen children, and one child who is a lawful permanent resident. The applicant seeks a waiver of her inadmissibilities in order to enter the United States and reside with her family.

The AAO will first address the field office director's findings of inadmissibility under sections 212(a)(7)(A), 212(a)(5)(A)(i), and 212(a)(6)(B) of the Act. The AAO finds that if the applicant's other grounds of inadmissibility are waived, inadmissibility under sections 212(a)(7)(A) and 212(a)(5)(A)(i) of the Act will no longer apply, as these pertain to documentary requirements for admission and she will then possession a valid immigrant visa as the spouse of a U.S. citizen. The AAO also finds that section 212(a)(6)(B) of the Act does not apply to the applicant because the applicant was not in removal proceedings, but was placed in exclusion proceedings. *See Memo, Virtue, Acting Exec. Assoc. Comm.*, HQ IRT 50/51.2, 96 Act 043 (June 17, 1997).

The AAO now turns to the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act. The record indicates that in February 1991 the applicant attempted to enter the United States by using a fraudulent lawful permanent residence card.

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.

Section 212(i) of the Act provides that:

> (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 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 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.

The record also indicates that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant entered the United States in February 1991. The applicant remained in the United States until May 2008. Therefore, the applicant accrued unlawful presence from April 1, 1997 until May 2008. In applying for an immigrant visa, the applicant is seeking admission within ten years of her May 2008 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> . . . .

> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The AAO also finds that the applicant is inadmissible under section 212(a)(2)(A) of the Act for having been convicted of crimes involving moral turpitude.[1]

Section 212(a)(2)(A) of the Act states, in pertinent parts:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
>
> (ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-
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> (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or
>
> (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess

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[1] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the field office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

> of 6 months (regardless of the extent to which the sentence was ultimately executed).

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

> [M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....
>
> In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a "realistic probability, not a theoretical possibility," that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an "actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien's own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude." *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, "the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude." *Silva-Trevino*, 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the "record of conviction" to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. *Id.* at 699-704, 708-709. However, this "does not mean that the parties would be free to present any and all evidence bearing on an alien's conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself." *Id.* at 703.

On or about September 25, 1995, the applicant was convicted for willful infliction of corporal injury on a spouse, co-habitant or parent of the perpetrator's child, in violation of section 273.5(a) of the California Penal Code. She was sentenced to three years probation. The Board found in *In re Tran*, 21 I&N Dec. 291, (BIA 1996) that willful infliction of corporal injury on a spouse, co-habitant or parent of the perpetrator's child, in violation of section 273.5(a) of the California Penal Code, constitutes a crime involving moral turpitude. Thus, the applicant is subject to section 212(a)(2)(A) of the Act for her 1995 conviction.[2]

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

> (h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in [her] discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—
>
> (1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that—
>
> (i)...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
>
> (ii)the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
>
> (iii) the alien has been rehabilitated; or
>
> (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it established to the satisfaction of the [Secretary] that the alien's denial

[2] The AAO notes that this conviction was not disclosed on the applicant's immigrant visa application (Form DS-230).

> of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien...
>
> (2) the [Secretary], in [her] discretion, and pursuant to such terms, conditions and procedures as [she] may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

Section 212(h)(1)(A) of the Act provides that the Secretary may, in her discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if the activities for which the applicant is inadmissible occurred more than 15 years before the date of the applicant's application for a visa, admission, or adjustment of status. An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992).

Since the applicant's criminal conviction occurred more than 15 years ago, the inadmissibility can be waived under section 212(h)(1)(A) of the Act. Section 212(h)(1)(A) of the Act requires that the applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States, and that he has been rehabilitated.

Section 212(h)(1)(A)(ii) and (iii) of the Act requires that the applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States; and that the applicant establish her rehabilitation. Evidence in the record to establish the applicant's eligibility under section 212(h)(1)(A)(ii) and (iii) of the Act consists of a statement from the applicant's spouse. The AAO finds that the applicant has provided sufficient evidence to demonstrate that her admission to the United States is not contrary to the national welfare, safety, or security of the United States, and that she has been rehabilitated, as required by section 212(h)(1)(A)(ii) and (iii) of the Act.

Once eligibility for a waiver is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996). A favorable exercise of discretion is limited in the case of an applicant who has been convicted of a violent or dangerous crime.

The regulation at 8 C.F.R. § 212.7(d) provides:

> The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or

> dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

The AAO notes that the words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not further defined in the regulation, and the AAO is aware of no precedent decision or other authority containing a definition of these terms as used in 8 C.F.R. § 212.7(d). A similar phrase, "crime of violence," is found in section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). Under that section, a crime of violence is an aggravated felony if the term of imprisonment is at least one year. As defined by 18 U.S.C. § 16, a crime of violence is an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, *or* any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. We note that the Attorney General declined to reference section 101(a)(43)(F) of the Act or 18 U.S.C. § 16, or the specific language thereof, in 8 C.F.R. § 212.7(d). Thus, we find that the statutory terms "violent or dangerous crimes" and "crime of violence" are not synonymous and the determination that a crime is a violent or dangerous crime under 8 C.F.R. § 212.7(d) is not dependant on it having been found to be a crime of violence under 18 U.S.C. § 16 or an aggravated felony under section 101(a)(43)(F) of the Act. *See* 67 Fed. Reg. 78675, 78677-78 (December 26, 2002).

Nevertheless, we will use the definition of a crime of violence found in 18 U.S.C. § 16 as guidance in determining whether a crime is a violent crime under 8 C.F.R. § 212.7(d), considering also other common meanings of the terms "violent" and "dangerous". The term "dangerous" is not defined specifically by 18 U.S.C. § 16 or any other relevant statutory provision. Thus, in general, we interpret the terms "violent" and "dangerous" in accordance with their plain or common meanings, and consistent with any rulings found in published precedent decisions addressing discretionary denials under the standard described in 8 C.F.R. § 212.7(d). Decisions to deny waiver applications on the basis of discretion under 8 C.F.R. § 212.7(d) are made on a factual "case-by-case basis." 67 Fed. Reg. at 78677-78.

The AAO finds that domestic violence is a violent and dangerous crime. Accordingly, the applicant must show that "extraordinary circumstances" warrant approval of the waiver. 8 C.F.R. § 212.7(d). Extraordinary circumstances may exist in cases involving national security or foreign policy considerations, or if the denial of the applicant's admission would result in exceptional and extremely unusual hardship. *Id.* Finding no evidence of foreign policy, national security, or other extraordinary equities, the AAO will consider whether the applicant has

"clearly demonstrate[d] that the denial of . . . admission as an immigrant would result in exceptional and extremely unusual hardship" to a qualifying relative. *Id.*

In *Matter of Monreal-Aguinaga*, 23 I& N Dec. 56, 62 (BIA 2001), the BIA determined that exceptional and extremely unusual hardship in cancellation of removal cases under section 240A(b) of the Act is hardship that "must be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." However, the applicant need not show that hardship would be unconscionable. *Id.* at 61. The AAO notes that the exceptional and extremely unusual hardship standard in cancellation of removal cases is identical to the standard put forth by the Attorney General in *Matter of Jean, supra*, and codified at 8 C.F.R. § 212.7(d).

The BIA stated that in assessing exceptional and extremely unusual hardship, it would be useful to view the factors considered in determining extreme hardship. *Id.* at 63. In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established the lower standard of extreme hardship. 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *Id.*

In *Monreal*, the BIA provided additional examples of the hardship factors it deemed relevant for establishing exceptional and extremely unusual hardship:

> [T]he ages, health, and circumstances of qualifying lawful permanent resident and United States citizen relatives. For example, an applicant who has elderly parents in this country who are solely dependent upon him for support might well have a strong case. Another strong applicant might have a qualifying child with very serious health issues, or compelling special needs in school. A lower standard of living or adverse country conditions in the country of return are factors to consider only insofar as they may affect a qualifying relative, but generally will be insufficient in themselves to support a finding of exceptional and extremely unusual hardship. As with extreme hardship, all hardship factors should be considered in the aggregate when assessing exceptional and extremely unusual hardship.

23 I&N Dec. at 63-4.

In the precedent decision issued the following year, *Matter of Andazola-Rivas*, the BIA noted

that, "the relative level of hardship a person might suffer cannot be considered entirely in a vacuum. It must necessarily be assessed, at least in part, by comparing it to the hardship others might face." 23 I&N Dec. 319, 323 (BIA 2002). The issue presented in *Andazola-Rivas* was whether the Immigration Judge correctly applied the exceptional and extremely unusual hardship standard in a cancellation of removal case when he concluded that such hardship to the respondent's minor children was demonstrated by evidence that they "would suffer hardship of an emotional, academic and financial nature," and would "face complete upheaval in their lives and hardship that could conceivably ruin their lives." *Id.* at 321 (internal quotations omitted). The BIA viewed the evidence of hardship in the respondent's case and determined that the hardship presented by the respondent did not rise to the level of exceptional and extremely unusual. The BIA noted:

> While almost every case will present some particular hardship, the fact pattern presented here is, in fact, a common one, and the hardships the respondent has outlined are simply not substantially different from those that would normally be expected upon removal to a less developed country. Although the hardships presented here might have been adequate to meet the former "extreme hardship" standard for suspension of deportation, we find that they are not the types of hardship envisioned by Congress when it enacted the significantly higher "exceptional and extremely unusual hardship" standard.

23 I&N Dec. at 324.

However, the BIA in *Matter of Gonzalez Recinas*, a precedent decision issued the same year as *Andazola-Rivas*, clarified that "the hardship standard is not so restrictive that only a handful of applicants, such as those who have a qualifying relative with a serious medical condition, will qualify for relief." 23 I&N Dec. 467, 470 (BIA 2002). The BIA found that the hardship factors presented by the respondent cumulatively amounted to exceptional and extremely unusual hardship to her qualifying relatives. The BIA noted that these factors included her heavy financial and familial burden, lack of support from her children's father, her U.S. citizen children's unfamiliarity with the Spanish language, lawful residence of her immediate family, and the concomitant lack of family in Mexico. 23 I&N Dec. at 472. The BIA stated, "We consider this case to be on the outer limit of the narrow spectrum of cases in which the exceptional and extremely unusual hardship standard will be met." *Id.* at 470.

An analysis under *Monreal-Aguinaga* and *Andazola-Rivas* is appropriate. *See Gonzalez Recinas*, 23 I&N Dec. at 469 ("While any hardship case ultimately succeeds or fails on its own merits and on the particular facts presented, *Matter of Andazola* and *Matter of Monreal* are the starting points for any analysis of exceptional and extremely unusual hardship.").

On appeal, counsel does not dispute the field office director's findings of inadmissibility. Counsel states that the applicant's spouse and children will suffer emotional, economic, medical, and educational hardship as a result of the applicant's inadmissibility.

Documentation submitted on appeal to support the applicant's hardship claims includes: the applicant's spouse's declaration, a letter from the applicant's spouse's employer, medical documentation, articles and reports regarding conditions in Nigeria, and a psychological evaluation on the applicant's spouse. Documentation submitted with the initial waiver application that was not also submitted on appeal includes documentation regarding the children's schooling in the United States.

In his declaration, dated September 17, 2008, the applicant's spouse states that he has been living in the United States for 26 years and that his children are suffering without the applicant in the United States. He states that his wife worked as a nurse in the United States and was able to contribute to the family income, but now he has to send money to Nigeria to support her. He states that if he moved to Nigeria with his children he would be underpaid in his job. He states that his children do not like Nigeria and that he fears harm as a U.S. citizen traveling in Nigeria. He states that when his oldest son travelled to Nigeria to wait for his visa interview he was stopped by police and suffered heat stroke. The applicant's spouse states further that one of his sons has a medical condition and that he suffers from glaucoma. He states that they are all suffering in the applicant's absence, that he is not able to sleep, he feels very tired everyday, and is suffering from anxiety.

Through letters and other documentation the record establishes that the applicant's spouse has been employed as a Correctional Officer for over ten years and earns $6,409 per month. The record also shows, in a letter from the applicant's son's asthma and allergy specialist, that the applicant's son suffers from asthma and allergies and requires full-time adult supervision to care for these conditions. A note from the applicant's child's pediatrician states that the applicant's son is under her care for severe persistent asthma and seizures. She states that the child requires constant care from both parents and has a history of multiple hospitalizations and follow-up visits. In regards to the applicant's son, the record also includes a letter from a pediatric pulmonology and pediatric critical care specialist. This specialist states that the applicant's son has moderate to severe persistent asthma and is on multiple medications. He states that as a result of the applicant's son's asthma, the applicant's son misses many school days and requires constant adult supervision because he can have an asthma attack at anytime. He states further that the applicant's son also needs careful and continuous monitoring for avoidance of allergens and for the administration of medications.

The record also includes a letter from the applicant's spouse's physician, [redacted] stating that the applicant's spouse has open angle chronic glaucoma in both eyes and is on a prescription for the disease.

A psychological assessment submitted as part of the record diagnoses the applicant's spouse with post-traumatic stress disorder. In the assessment, [redacted] states that the applicant's spouse is currently the sole caretaker for their four children with the fifth child, who is four years old, living with the mother in Nigeria. She states that the applicant's spouse works the graveyard

shift and struggles during the day to meet the children's needs because he has not had any sleep. states that the applicant's spouse is under enormous stress as the sole provider for his family and that this stress is causing strain on his eyes. also states that the applicant's children are suffering in that they have not seen their mother or sister since 2008.

Finally, a U.S. State Department Travel Warning, dated October 30, 2007, has been submitted as part of the record. The AAO notes that the U.S. State Department has issued a more current travel warning for Nigeria, as of October 13, 2011. This travel warning states that violent crime committed by individuals and gangs, as well as by persons wearing police and military uniforms, remains a problem throughout the country. The warning states further that U.S. citizen visitors and residents have experienced armed muggings, assaults, burglary, carjacking, rape, kidnappings, and extortion - often involving violence. The warning states that home invasions remain a serious threat, with armed robbers accessing even guarded compounds by scaling perimeter walls; following, or tailgating, residents or visitors arriving by car into the compound; and subduing guards and gaining entry into homes or apartments. Armed robbers in Lagos also access waterfront compounds by boat. U.S. citizens, as well as Nigerians and other expatriates, have been victims of armed robbery at banks and grocery stores and on airport roads during both daylight and evening hours. Law enforcement authorities usually respond slowly or not at all, and provide little or no investigative support to victims. U.S. citizens, Nigerians, and other expatriates have experienced harassment and shakedowns at checkpoints and during encounters with Nigerian law enforcement officials.

The warning also reports that there have been at least five bombings in the last year, including on August 26, 2011 at the United Nations Headquarters. The warning states that the risk of additional attacks against Western targets in Nigeria remains high and that kidnappings continue to be another security concern. The warning states further that in 2011, there were three reported kidnappings of U.S. citizens in Nigeria and since January 2009, over 140 foreign nationals have been kidnapped in Nigeria, including five U.S. citizens since November 2010. The warning states that six of these foreign nationals were killed during their abductions, while two U.S. citizens were also killed in separate kidnapping attempts in April 2010. Moreover, the report states that local authorities and expatriate businesses operating in Nigeria assert that the number of kidnapping incidents throughout Nigeria remains underreported.

Furthermore, the travel warning states that Nigeria is a multi-ethnic, multi-religious society in which different ethnic and religious groups often coexist in the same geographic area and that travelers throughout the country should be aware that, in areas where such circumstances prevail, there is the potential for ethnic or religious-based disturbances. The AAO notes that articles in the record also indicate that Nigeria's healthcare system is very poor.

The AAO notes that family separation must be considered in determining hardship. The Ninth Circuit stated that "the most important single hardship factor may be the separation of the alien

from family living in the United States" and that there must be a careful appraisal of "the impact that deportation would have on children and families." *Id.* at 1293. Furthermore, the Ninth Circuit indicated that "considerable, if not predominant, weight," must be attributed to the hardship that will result from family separation. *Id.* Although this case does not arise in the Ninth Circuit, we will give appropriate weight to the hardship of separation.

The asserted hardship factors in this case are emotional hardship as a result of separation from the applicant, concern about the applicant's well-being in Nigeria, and loss of financial support. Because of the applicant's work schedule, the existence of five children in the family, the serious medical problems suffered by the applicant's spouse and son, and the troubling conditions in Nigeria, the AAO finds that when all of the hardship factors are combined, the applicant has demonstrated that they rise to the level of "exceptional and extremely unusual hardship," as required in 8 C.F.R. § 212.7(d).

In addition, the applicant's spouse and four children would face emotional, physical, and financial hardship rising to the level of exceptional and extremely unusual if they relocated to Nigeria. The applicant's spouse's employment for over ten years as a correctional officer; the applicant's spouse's length of residence in the United States; the existence of four children in the family, including on child with severe medical issues; the applicant's spouse suffering from glaucoma; and the safety and health issues in Nigeria, are all hardship factors that combined rise to the level of "exceptional and extremely unusual hardship," as required in 8 C.F.R. § 212.7(d).

Because the applicant has met her burden in establishing that her qualifying relatives would suffer exceptional and extremely unusual hardship as a result of her inadmissibility, the AAO finds that she has also met her burden in establishing that her spouse would suffer extreme hardship as a result of her inadmissibility in accordance with section 212(i) and section 212(a)(9)(B)(v) of the Act.

The AAO acknowledges that the applicant's case includes significant unfavorable factors including numerous immigration violations and a conviction for a violent crime, but these factors do not override the extraordinary circumstances in the applicant's case. The AAO must not only look at the hardship in the applicant's case, but also engage in a traditional discretionary analysis and "balance 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." *Matter of Mendez-Moralez,* 21 I&N Dec. 296, 300 (BIA 1996)(Citations omitted).

The adverse factors in the present case are the applicant's criminal record and her numerous immigration violations. The favorable factors in the present case are the hardship the applicant's spouse and five children would suffer as a result of her inadmissibility; the support the applicant provides to her spouse, who suffers from glaucoma, and her child, who suffers from severe asthma; and the absence of a criminal record for fifteen years. The AAO also takes note of the country conditions in Nigeria.

The AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

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