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

(b)(6)

[redacted]

DATE: APR 2 4 2013 Office: MOSCOW File: [redacted]

IN RE: Applicant: [redacted]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), and Application for Permission to Reapply for Admission under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

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,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application and application for permission to reapply for admission were denied by the Field Office Director, Moscow, Russia, and are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native of Russia and a citizen of Ukraine, who was found to be inadmissible to the United States under sections 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring a visa by willfully misrepresenting a material fact, and pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), due to her expedited removal from the United States. The applicant is seeking a waiver of inadmissibility and permission to reapply for admission in order to reside in the United States with her U.S. citizen husband.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), as well as the Application for Permission to Reapply for Admission Into the United States after Deportation or Removal (Form I-212). *Decision of Field Office Director,* March 14, 2012.

On appeal, counsel for the applicant contends that the denial decision erred in overlooking the extreme hardships that the applicant's husband is suffering, and will continue to suffer, as a result of the applicant's inadmissibility and in not considering hardship in the aggregate due to separation from his wife. In support of the appeal, counsel submits a brief and updated documentation including, but not limited to: hardship statements; medical records; and tax records for a business. The record also contains extensive financial, medical, and psychological documentation submitted in support of the original waiver request and request for permission to reapply for admission; accounts of expedited removal; marriage, divorce, and birth records; country condition information; and the denial decision. The entire record was reviewed and considered in rendering this decision.

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

> 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)(1) of the Act provides:

> The [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 [...].

The record shows that the applicant willfully misrepresented material facts – regarding her employment status and length of intended stay – to a Consular Officer in order to obtain a B1/B2

visa in July 2009, was admitted to the United States on July 20, 2009, and remained until January 14, 2010 when she left the country. While attempting to procure admission two weeks later on January 29, 2010, she admitted during secondary inspection to the foregoing misrepresentations and was processed for expedited removal the following day. In addition to a waiver of inadmissibility for fraud, she will thus require consent to reapply for admission to the United States until five years have elapsed -- until January 29, 2015 -- for having been removed from the United States.

A waiver of inadmissibility under section 212(i)(1) 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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 Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

The denial decision concluded that the applicant had established her husband would suffer extreme hardship if he relocated to Ukraine. The AAO does not revisit that finding, but rather examines the record to determine whether the applicant has established that her absence would impose extreme hardship on her spouse if he remained in the United States.

As regards whether the qualifying relative is experiencing extreme hardship due to separation from the applicant, the updated record confirms the applicant's nearly 60-year-old husband has a number of medical conditions for which he receives regular treatment and monitoring. Documentation shows the qualifying relative having been diagnosed with both rheumatoid arthritis (generalized inflammation of the joints) and osteoarthritis (localized inflammation due to wear and tear) of the hand/wrist, as well as hepatitis C and a latent form of tuberculosis (TB) infection. Regarding his arthritic conditions, the record shows that, while he has maintained an active lifestyle, the applicant's husband has suffered painful flare-ups while overseas with his wife. Regarding his chronic infections, the record establishes that his doctor actively monitors these conditions with an eye toward offering his patient access to new therapies. The record reflects that the applicant's presence in the United States will spare him from traveling overseas for visits with his wife to ease the pain of separation and, thereby minimize the chances that painful episodes experienced during visits to Ukraine and Mexico will reoccur. Substantiating that his problems with medical services in Ukraine reflect a societal issue, the State Department advises that U.S. citizens who are ill or infirm not travel to the country, as "those with existing health problems may be at risk due to inadequate medical facilities." *Ukraine—Country Specific Information*, U.S. Department of State (DOS), January 31, 2013. Besides such health issues, the DOS report substantiates the qualifying relative's concerns for his wife's personal safety and security by noting that street crime is a serious problem, corruption pervasive among the police, and emergency services far below western standards.

Noting he was married twice for a total of 34 years before marrying the applicant in 2010, the qualifying relative observes that he does not do well alone. A psychotherapist concluded, based on targeted questionnaires and symptoms including sadness, crying, insomnia, loss of appetite/weight, headaches, and problems concentrating, that the applicant's husband suffers from major depression stemming from prolonged separation from his wife. *See Psychological Evaluation,* November 6, 2010. This report confirms that he receives little relief from anti-depressant medication and sleep aids prescribed by his doctor, and supports the therapist's conclusion that the qualifying relative's psychological distress will continue to worsen in his wife's absence. There is also evidence that the applicant's second wife, with whom he shares custody of their six year old son, has conditioned granting full custody upon the applicant's presence as a homemaker to the household, and that the applicant's husband is eager to have his son live with him and the applicant in a family unit.

Regarding the financial component of separation hardship, the record reflects that the applicant's husband has many ongoing expenses, including high fixed costs for his business, tuition and travel costs for his young son currently residing in with his mother and attending school, travel expenses to visit with his wife abroad, and costs of maintaining regular communications with his wife to ease the pain of separation. He notes actually maintaining not only a home in and a rental apartment for his wife, but also having significant expenses associated with supporting his son in The record suggests that the expenses of maintaining both households have strained his financial resources and forced him to access retirement accounts to make ends meet.

For all these reasons, the cumulative effect of the physical, emotional, and financial hardships the applicant's husband is experiencing due to his wife's inadmissibility rises to the level of extreme. The AAO concludes based on the evidence provided that, were her husband to remain in the United States without the applicant due to her inadmissibility, he would suffer extreme hardship beyond those problems normally associated with family separation.

The documentation on record, when considered in its totality, reflects 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 she 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 "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." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the applicant's husband would face if the applicant were to reside in Ukraine, regardless of whether he accompanied the applicant or remained here; the applicant's lack of any criminal record; supportive statements; passage of nearly four years since the applicant's misrepresentations; and her ready admission to and contrition about her misrepresentations. The unfavorable factors in this matter are the applicant's willful misrepresentations and unauthorized employment in this country.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the equities involved, including the passage of time since the applicant's violations of immigration law and the fact that she has resided outside the United States for over three years since being deported, the AAO finds that a favorable exercise of discretion is warranted.

The AAO notes that the field office director also denied the applicant's Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) in the same decision as a matter of discretion based on the denial of the Form I-601. As the AAO has now found the applicant eligible for a waiver of inadmissibility under section 212(i) of the Act, it will withdraw the field office director's decision on the Form I-212 and render a new decision.

Section 212(a)(9)(A) provides, in pertinent part:

> (i) Arriving Aliens. – Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal … is inadmissible.
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> (ii) Other Aliens. – Any alien not described in clause (i) who—
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> (I) has been ordered removed under section 240 or any other provision of law, or

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(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal ... is inadmissible.

(iii) Exception. – Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the alien's reapplying for admission.

On January 30, 2010, the applicant was expeditiously removed from the United States under section 235(b)(1) of the Act. She is thus inadmissible under section 212(a)(9)(A)(i) of the Act and must obtain permission to reapply for admission.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. The AAO has found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated in that finding, the AAO finds that the applicant's Form I-212 should also be granted as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility and for consent to reapply for admission, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden and, accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application and application for permission to reapply are granted.