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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

H5

[redacted]

Date: DEC 02 2011 Office: RENO FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Reno, Nevada. 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 El Salvador who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring an immigration benefit to the United States through fraud or misrepresentation. The applicant attempted to enter the United States in May 2000 with a B-2 visitor's visa, which she had obtained at the U.S. Consulate in San Salvador, El Salvador through misrepresentation of a material fact, concealing information that her father was residing in the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with her U.S. Citizen spouse.

In a decision dated August 7, 2009, the Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Notice of Decision of the Field Office Director,* dated August 7, 2009.

The record contains the following documentation: a brief filed by the applicant's attorney; a psychological evaluation for the applicant's spouse dated May 20, 2009; a medical report dated September 10, 2009; financial documentation; and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> 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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or

lawfully resident spouse or parent of the applicant. The applicant's husband is the qualifying relative in this case. Under this provision of the law, children are not deemed to be "qualifying relatives." However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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 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 attorney contends that the applicant's spouse would suffer emotional distress, loss of companionship, and possibly suffer major depression if the applicant's waiver is not approved. *See Brief in support of I-290B, Notice of Appeal or Motion*, dated September 11, 2009. In support of this contention, the applicant's attorney cites a psychological evaluation conducted by [redacted] which states that when the applicant was initially denied entry to the United States in 2000, the applicant's spouse (boyfriend at the time) became depressed, and exhibited symptoms warranting a diagnosis of Major Depression. The symptoms included periods of depressed mood, loss of concentration, insomnia, loss of appetite, fatigue, and weight loss. [redacted] further states that the applicant's spouse is closer to the applicant now, and that the couple now have a child, and that it would be highly likely that the applicant's spouse would again experience Major Depression as a reaction to the high stress of a separation from the applicant. *See Psychological Evaluation of* [redacted] dated May 20, 2009. The record further includes doctor's letter which states that the applicant's spouse was recently diagnosed with Depression and is being treated with medications. *See Letter of* [redacted] dated September 10, 2009.

The psychological evaluation of [redacted] further indicates that the financial hardship that the applicant's spouse would encounter if the waiver is not approved is a serious consideration. [redacted] notes that the applicant was employed, and that the loss of her income will present more hardship for the applicant's spouse. *See Psychological Evaluation of* [redacted] dated May 20, 2009. The record includes the following financial documentation: a copy of the 2008 joint federal income tax return filed by the applicant's spouse and the applicant, indicating an income of $73,161; a copy of the 2007 federal income tax return filed by the applicant's spouse, indicating an income of $61,959; a bank statement; and a November 18, 2008 letter from [redacted], indicating the employment of the applicant's spouse. The AAO notes that the September 10, 2009 medical letter indicates that the applicant's spouse is suffering stress from the loss of his job as a carpenter, requiring the applicant's spouse to take on another job which is not his line of work; *See Letter of* [redacted] dated September 10, 2009. The psychological evaluation of [redacted] states that should the applicant's spouse have to support the applicant in El Salvador, that this would stretch his already limited finances. *See Psychological Evaluation of* [redacted] dated May 20, 2009.

The record includes evidence that the applicant's daughter is suffering from medical problems. According to the psychological report, the applicant's daughter has recently been diagnosed with Hyperopia Astigmatism, which requires glasses and ongoing care by an Optometrist. According to [redacted] if not properly treated, this disease can cause blindness. *See Psychological Evaluation of* [redacted] dated May 20, 2009. As noted above, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. According to the psychologist, the medical condition of applicant's daughter is causing further anxiety to the qualifying relative.

The applicant's spouse has established that he would experience extreme hardship in the United States should the applicant's waiver not be granted. The applicant's spouse has established that he would suffer emotional hardship and possibly major depression if he is separated from the applicant. Furthermore, the applicant has established that her daughter has a medical condition that requires treatment, which is causing further anxiety to the applicant's spouse. These hardships, when considered in the aggregate with any potential financial hardship resulting from the applicant's departure, are beyond the common results of removal or inadmissibility.

The applicant's counsel asserts that although the civil war has ended in El Salvador, the U.S. State Department Report on Human Rights indicates that there is a very high rate of crime and gang activity. *See Brief in support of I-290B, Notice of Appeal or Motion,* dated September 11, 2009. The AAO notes that the U.S. Department of State has indicated that there are threats to safety and security, and a high crime rate in El Salvador.[1] The evidence on the record, when considered in its

[1] As noted by the U.S. Department of State:

> ... the criminal threat in El Salvador is critical. Random and organized violent crime is endemic throughout El Salvador. U.S. citizens have not been singled out by reason of their nationality, but are subject to the same threat as all other persons in El Salvador....
>
> The State Department considers El Salvador a critical-crime-threat country. El Salvador has one of the highest homicide rates in the world; violent crimes, as well as petty crimes are prevalent throughout El Salvador, and U.S. citizens have been among the victims. The Embassy is aware of at least nine American citizens who were murdered in El Salvador during the last year.
>
> Extortion is on the rise and U.S. citizens and their family members have been victims in various incidents. Violent, organized gangs are a major factor in the crime situation and are often behind extortion attempts. Some areas of El Salvador are effectively controlled by gangs. Many gangs have access to military-style hardware, including automatic weapons and hand grenades. *U.S. Department of State. El Salvador; Country Specific Information.* dated February 10, 2011.

totality, establishes that the applicant's spouse would suffer extreme hardship if he relocated to EL Salvador due the fact that he has lived in the United States for over 14 years; his family ties in the United States, including his mother and siblings; his concerns for the applicant's safety and the safety of their daughter; and the difficulty in finding appropriate medical care for their daughter in El Salvador.

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 hardships the applicant's U.S. Citizen spouse would face if the applicant were to reside in El Salvador, regardless of whether he accompanied the applicant or remained in the United States; the applicant's apparent lack of a criminal record; and the passage of more than ten years since the applicant's entry to the United States. The unfavorable factor in this matter is the applicant's misrepresentation of a material fact in a prior application for a visa to enter the United States.

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 factors. 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 waiver application is approved.