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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

[redacted]

H5

Date: JUL 01 2011 Office: ATHENS 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved. The matter will be returned to the field office director for continued processing.

The applicant is a native and citizen of Iraq. The applicant was 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 visa for travel to the United States 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 extreme hardship to a qualifying relative had not been established and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director,* dated March 11, 2009.

In support of the appeal, counsel for the applicant submits a brief, dated May 12, 2009, and referenced exhibits, including but not limited to: a psychological report; evidence of the applicant's spouse's travels to Iraq to visit the applicant; documentation of the applicant's spouse's relatives' U.S. citizen or lawful permanent resident status; information about country conditions in Iraq; and financial documentation. 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....

The record indicates that a consular officer found a fingerprint match between the applicant and an individual who sought a nonimmigrant visa at the U.S. Embassy in Ankara, Turkey in 2004, using the name [redacted] with a year of birth two years later than the one used by the applicant for her immigrant visa application. The applicant denied having applied for a visa in Ankara and stated when shown the picture that corresponded to [redacted] nonimmigrant visa application that it was her younger sister. The evidence on the record establishes that the applicant did apply for a nonimmigrant visa in 2004 using false identity documents, and she is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having misrepresented her identity, a material fact, while seeking to obtain a 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. Hardship to the applicant, her mother-in-law or their child 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 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 asserts that he will suffer extreme hardship were he to reside in the United States while the applicant remains abroad due to her inadmissibility. In a declaration he explains that he has been separated from his wife since 1996, when he was evacuated from Iraq because he was working as a security guard for the CIA. He notes that he has suffered immensely due to their separation and wants to start his life over with his wife and their young child, born in 2007, in the United States. He references the fact that his wife's father was executed when she was only 11 years old, when, as a member of the Iraqi army, he tried to escape the war in Kuwait. *Statement of* [redacted]

In support, a psychological report has been provided by [redacted], Bilingual Psychotherapist. [redacted] states that the applicant's spouse is suffering from anxiety and panic attacks as a result of his wife's inadmissibility and her residence in Iraq, where he reports there is extreme violence, including murders, car bombs, and shootings. The applicant's spouse contends that he has to talk to his wife and child every night before going to sleep to at least know they are still alive. [redacted] concludes that the applicant's spouse's mental health issues are completely due to the anxiety about the prolonged separation from his wife, and recommends that the applicant's spouse receive counseling, psychotherapy, and a medication evaluation. *Letter from* [redacted], dated December 29, 2008.

In addition, evidence of the applicant's spouse's financial contributions to his wife's and child's household in Iraq has been provided. Moreover, tax returns from 2007 and 2008 establish that the applicant's spouse's income has decreased by 20%, worsening his financial situation. Finally, extensive documentation about the problematic country conditions in Iraq has been provided by counsel.

Based on the turmoil in Iraq, as confirmed by the U.S. Department of State and discussed in detail below, the applicant's spouse's fears and anxieties with respect to his wife's and child's safety and well-being amounts to hardship that goes significantly beyond that normally suffered upon the separation of families due to inadmissibility. When combined with financial hardship resulting from having to maintain two households while experiencing a significant decrease in income, the emotional and psychological hardship the applicant's U.S. citizen spouse faces due to the applicant's inadmissibility amounts to extreme hardship if he remained in the United States while the applicant resided in Iraq.

In regards to extreme hardship were the applicant's spouse to relocate abroad, the applicant's U.S. citizen spouse asserts that he would suffer emotional and financial hardship. The applicant's spouse references, and counsel documents, the problematic country conditions in Iraq. The AAO notes that a travel warning has been issued by the U.S. Department of State, recommending against all but essential travel to Iraq due to the dangerous security situation *Travel Warning-Iraq, U.S. Department of State,* dated April 12, 2011. The applicant's spouse further references the hardships he would experience due to long-term separation from his disabled mother and extended family members and his tire and auto repair business. *Supra* at 1-3.

Based on the problematic country conditions in Iraq, as documented by counsel and confirmed by the U.S. Department of State, and hardships due to long-term separation from his family, his business and his community, the AAO concludes that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to Iraq to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects 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).

[redacted] 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 remain abroad, regardless of whether he accompanied the applicant or remained in the United States and the applicant's apparent lack of a criminal record. The unfavorable factor in this matter is the applicant's attempt to procure entry to the United States by fraud and/or willful misrepresentation.

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 under section 212(a)(6)(C)(i) of the Act, 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.