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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H5

DATE: JUL 02 2012 Office: MILWAUKEE, WI 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 Officer Director, Milwaukee, Wisconsin. The appeal was denied by the AAO. The matter is now before the Administrative Appeals Office (AAO) on Motion. The motion will granted, the appeal will be sustained, and the application will be approved.

The applicant is a native and a citizen of Macedonia who entered the United States with a Slovenian passport containing a false name. The applicant was found to be inadmissible to the United States pursuant to 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 entry to the United States by willful misrepresentation. He is the spouse of a U.S. citizen and has two U.S. citizen daughters. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 28, 2007. The applicant appealed and the AAO denied the appeal on June 24, 2010.

On motion, counsel for the applicant asserts the Field Office Director's decision was in error and that the applicant has demonstrated a qualifying relative will experience extreme hardship due to his inadmissibility. *Form I-290B*, received October 29, 2007.

The record contains, but is not limited to, the following relevant evidence: a brief from counsel; a statement from the applicant's spouse; medical records pertaining to the applicant's spouse, including surgery reports, progress reports related to various medical conditions, billing and appointment records; medical records pertaining to the applicant's children; copies of insurance, phone, water and electrical bills; copies of tax returns for the applicant's spouse; a statement from [redacted] pertaining to the applicant's spouse; a statement from [redacted] pertaining to the applicant's spouse; a statement from [redacted] of Hartford Clinic pertaining to the applicant's spouse; a statement from [redacted] pertaining to the applicant's oldest daughter; a statement from the applicant's spouse's employer; photographs of the applicant, his spouse and their daughters; and photographs documenting medical conditions for the applicant's spouse and their two daughters. The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (i) In general. 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 chapter is inadmissible.

The record indicates that the applicant presented a Slovenian passport with a false name when entering the United States on June 9, 1999, and thus he entered the United States by materially

misrepresenting his identity. Therefore, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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

> (1) The Attorney General may, in the discretion of the Attorney General, 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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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.

Counsel asserts on appeal that the applicant's spouse would experience emotional, physical and medical impacts rising to the level of extreme hardship upon relocation. *Statement in Support of Motion*, received August 4, 2010. Counsel explains that the applicant's spouse suffers from psoriasis and depression, complicated pregnancies and has had to have surgery to correct blockages in her nasal passages. Counsel further asserts that the applicant's oldest daughter suffers from Blount's Disease, has had to have two painful corrective operations on her legs with more to come as she grows, and that she needs to remain in the United States in order to be monitored by her doctors. Counsel explains that the applicant's youngest daughter also suffers from Eczema and would experience a significant impact if she relocated.

The applicant's spouse has submitted a statement asserting she would experience physical and financial hardship upon relocation. *Statement in Support of Appeal*, dated July 23, 2010. She

explains that she previously visited Macedonia and was unable to obtain proper medication for her psoriasis. She further states that she does not speak Macedonian, is not familiar with the language and culture, and would not be able to find adequate employment to sustain herself or her family. She also states that she would have to sever extensive family ties in the United States if she relocated. The applicant's spouse also notes that she currently has health insurance through her employment to help her cover the costs of her own treatment and those of her daughters.

Upon examination of the record the AAO finds the medical issues of the applicant's spouse and daughters to be a significant source of hardship in this case. The record contains extensive medical evidence supporting counsel's assertions that the applicant's spouse suffers from psoriasis, a skin condition that requires medications and phototherapy sessions to treat. In a statement dated July 19, 2010, [redacted] states that the applicant's spouse has a history of generalized plaque psoriasis involving the scalp, face, trunk and extremeties, and that having access to her phototherapy treatments – required 3 – 5 times weekly – is critical to her continued treatment. The record also contains an appointment list showing the applicant's spouse's appointments to treat this condition. The record further contains copies of her surgical report for the removal of a growth on her septum, visitation notes detailing episodes of vertigo, as well as referral letters to address joint pains arising from her psoriasis.

The AAO finds this evidence and other documents in the record to be conclusive with regard to the existence and impact of the applicant's spouse's medical conditions. Disrupting the applicant's spouse's continuity of care with her medical doctors and treatment would represent a substantial hardship upon relocation, and this hardship factor will be given considerable weight upon relocation.

The applicant's spouse has also discussed the medical conditions of her daughters and the fact that she and her daughters are covered by health insurance through her employers. As noted above, children are not qualifying relatives in this proceeding, as such, any hardship related to them is only related to the extent that it creates a hardship for a qualiyfing relative. However, as with the spouse's medical conditions, the record is well organized and well documented with regard to the medical conditions of the applicant's oldest daughter. In a statement dated July 20, 2010, [redacted] states that the applicant's oldest daughter has been diagnosed with Blount's Disease, has already had three surgeries to correct the condition in her legs and will require many more as she grows. [redacted] notes that the recovery after each surgery is difficult, and that the child needs physical support to do things most children her age can do by themselves. There is also a photograph of the applicant's youngest daughter showing what appears to be a skin condition on her face.

The AAO finds this evidence to be conclusive of the medical conditions the applicant's children are currently experiencing, and probative of the impact that will arise on the applicant's spouse from having to provide the physical support necessary for her daughter's recovery without the assistance of the applicant. As such, the AAO finds that the applicant's daughter would experience an uncommon physical hardship from having to disrupt the continuity of her medical care in the United States in order to relocate to Macedonia, and that this challenge would impact

the applicant's spouse to the extent that it constitutes a significant hardship upon relocation. This hardship factor will be given substantial weight when aggregating the impacts on the applicant's spouse upon relocation.

The AAO also finds the record to contain sufficient evidence establishing that the applicant's spouse's employment provides medical insurance for herself and her daughters. In light of their medical conditions and the persistent, urgent need for monitoring in the case of the applicant's spouse and oldest daughter, the AAO concludes that disrupting her employment and the health insurance she derives from it would result in an uncommon financial and physical hardship on the applicant's spouse if she were to relocate.

Counsel and the applicant's spouse have articulated a number of other impacts upon relocation, particularly with regard to the applicant's spouse's family ties, country conditions in Macedonia and complicated pregnancies. When these common impacts are considered in light of the hardship factors discussed above, the AAO finds the record to establish that the applicant's spouse would experience hardship impacts rising to the level of extreme upon relocation.

As discussed above, the AAO finds the record to establish that the applicant's spouse and daughters have significant medical conditions which impact their ability to function on a daily basis. The submitted medical evidence indicates that the applicant's daughter, and at times the applicant's spouse, will need physical support to help maintain their health and daily lives. The direct and indirect hardship factors associated with medical hardship on the applicant's spouse and daughter will be given substantial weight when aggregating the impacts upon separation.

Counsel asserts the applicant's spouse will suffer physical, emotional and financial hardship upon separation. *Statement in Support of Motion*, received August 4, 2010. He states that the applicant's spouse would have to assume additional child care costs, travel costs and other related financial impacts if the applicant were removed. Counsel further asserts that the applicant's spouse suffers from depression, and that without the applicant present to provide physical and emotional support she will struggle to support herself and her two children, each of whom have medical conditions.

The applicant's spouse has also asserted she would experience significant financial impact if the applicant were removed. While the record contains copies of bills for the applicant's spouse, as well as a letter from her employer, proof of her attendance to nursing school and copies of tax returns, the AAO notes that there is insufficient evidence to establish that the degree of financial impact will be uncommon. In addition, the AAO notes that the applicant's spouse has many family members in the United States, and the record does not indicate they would be unable to assist her in mitigating any financial impacts due to the applicant's departure. When the evidence on this issue is examined in the aggregate, the AAO does not find any basis to conclude that the applicant's spouse will experience uncommon financial hardship upon separation.

As discussed above, the record contains evidence that the applicant's spouse suffers from several medical conditions. As could be expected in a situation where an individual has serious medical

conditions and her spouse is facing removal, there is evidence the applicant's spouse will experience uncommon emotional hardship. Counsel asserts that the applicant's spouse is suffering from depression and refers to a statement in the record from [redacted] In a statement dated July 20, 2010, [redacted] stated that he is treating the applicant's spouse for depression. In light of evidence in the record corroborating the applicant's spouse's medical conditions, the AAO will give [redacted] statement consideration when aggregating the impacts on the applicant's spouse due to separation.

When the AAO examines the hardship factors upon separation in the aggregate it finds the record sufficient to establish that the hardships will rise above those commonly experienced by the relatives of inadmissible aliens to a degree constituting extreme hardship.

As the applicant has established extreme hardship to a qualifying relative, the AAO may now move to consider whether the applicant warrants a waiver as a matter of discretion. 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 section 212(h)(1)(B) 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 AAO finds that the unfavorable factors in this case include the applicant's misrepresentation and unauthorized employment. The favorable factors in this case include the presence of the applicant's spouse, the presence of his U.S. citizen children and his lawful permanent resident mother, and the delicate medical condition of his oldest daughter and the extreme hardship his spouse would experience due to his removal. Although the applicant's misrepresentation and

unauthorized employment are serious violations of U.S. immigration law, the favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised. The appeal will be sustained.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.