U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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DATE: JUN 27 2012 OFFICE: PHILADELPHIA, PA 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)

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, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of the [redacted] who has resided in the United States since April 10, 1996, when she presented a passport which did not belong to her to procure admission into the United States. The applicant had used this passport and a false identity to procure a nonimmigrant visa. She 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 having procured a visa and admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. Citizen spouse and children.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative given her inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated June 18, 2010.

On appeal, counsel for the applicant contends the spouse would experience extreme hardship upon separation from the applicant because of the family's financial situation, a daughter's learning disability, and medical issues. Counsel asserts the applicant's spouse would also experience extreme hardship if he relocated to the Cote d'Ivoire due to the dangerous country conditions, the spouse's inability to find employment, and the potential for female genital mutilation (FGM) with respect to the two daughters.

The record includes, but is not limited to, financial, educational, and medical records, statements from the applicant and her spouse, other applications and petitions filed on the applicant's behalf, evidence of birth, marriage, residence, and citizenship, and articles on country conditions. 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 [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.

In the present case, the applicant admitted in an immigration interview that she assumed the identity of [redacted] who had a passport from the [redacted] The applicant further stated that she applied for a B-1/B-2 nonimmigrant visa using this identity, and in her application she claimed that she was married when in fact she was not. The applicant was admitted to the United States on April 10, 1996 after presenting that nonimmigrant visa to immigration officials. Inadmissibility is not contested on appeal. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured a visa and admission to the United States through fraud or misrepresentation. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. Citizen spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 spouse contends he would experience financial, emotional, and familial hardship if he were separated from the applicant. Birth certificates show that the applicant and her spouse have two daughters, ages two and 14, and one son who is 11 years old. The spouse explains that the elder daughter has a learning disability for which she receives special education and therapy, and that both daughters have eye issues which require biannual checkups. Educational and medical records are submitted in support. The spouse indicates that due to those needs and other household expenses, the applicant's presence and employment in the United States is crucial. The applicant submits her paystubs and letters from the Delaware department of labor as evidence of household income, and a budget sheet with monthly bills as evidence of household expenses.

Counsel asserts that relocation to the [redacted] where the applicant's spouse was born, would constitute extreme hardship because he has lived in the United States for over 21 years and he has very limited ties in that country. Counsel adds that relocation would place the spouse and the three children in danger, given the current country conditions, and that the spouse would be unable to find employment in the [redacted] The applicant's spouse expresses concern about the

safety situation, as well as the possibility that his two daughters will be subject to FGM should the family relocate to the [redacted]

The record demonstrates that the applicant's spouse will experience financial hardship without the applicant present. Paystubs show that the applicant earns approximately $25.00 an hour as a licensed practical nurse, and that the applicant's spouse has had difficulty finding a job and has received unemployment benefits for 20 weeks prior to June 19, 2010. Moreover, the applicant submitted a budget sheet with supporting evidence of monthly expenses. This evidence of income and expenses indicates that the household expenses exceed the spouse's income from unemployment compensation.

The applicant has also shown that the applicant's elder daughter has a learning disability for which an individualized education program has been implemented. Furthermore, the record contains evidence that the daughters have had some medical treatments related to their eyes, and that the spouse has been diagnosed with high blood pressure and abnormal cholesterol levels. The applicant's spouse explained that the family has health insurance through the applicant's employment, which alleviates his emotional distress due to these medical and educational issues.

As such, the AAO finds there is sufficient evidence of record to demonstrate that the spouse's hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record demonstrates that the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that he would suffer extreme hardship if the waiver application is denied and the applicant returns to the [redacted] without his spouse.

Furthermore, the record also demonstrates that the applicant's spouse would experience extreme hardship if he returned to the country of his birth. The applicant's spouse has resided in the United States for over 20 years. Relocation to the [redacted] would entail moving the three children as well as the spouse to a country which has infrastructure problems and issues with safety and security. The U.S. Department of State indicates in a current travel warning:

> The Department of State warns U.S. citizens of the risks of travel to [redacted] U.S. citizens who reside in or travel to [redacted] should monitor conditions carefully, maintain situational awareness, and pay very close attention to their personal security. While the security situation has improved during the past several months, the potential for some civil unrest remains. Security conditions could change quickly and without warning.

Travel Warning: [redacted] *U.S. Department of State,* April 23, 2010. Additionally, the spouse's concerns with respect to his daughters undergoing FGM are substantiated by the U.S. Department of State's human rights report, which states:

> FGM was reportedly a serious problem in some parts of the country. The law specifically forbids FGM and provides penalties for practitioners of up to five

> years' imprisonment and fines of FCFA 360,000 to two million ($720 to $4,000). Double penalties apply to medical practitioners. FGM was practiced most frequently among rural populations in the North and West. Local NGOs continued public awareness programs to prevent FGM and worked to persuade practitioners to stop the practice. However, authorities made few arrests related to FGM during the year, and practitioners were rarely charged.

Human Rights Report: [redacted], U.S. Department of State, 2011. It is also noted that evidence submitted with the waiver application indicates that 44.5 percent of the women in the [redacted] have undergone type II FGM. [redacted] *Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC), U.S. Department of State,* June 1, 2001.

Given this evidence, the AAO finds the applicant has demonstrated that her spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record contains sufficient evidence to demonstrate the emotional, safety-related, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to the [redacted]

Considered in the aggregate, the applicant has established that her spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The adverse factors include her misrepresentation to procure a visa and admission into the United States and periods of unauthorized presence and employment. The positive factors include the extreme hardship to the applicant's spouse, evidence of hardship to the applicant and her children, the applicant's lack of a criminal history, and evidence of steady employment as stated in the letter from her employer.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.