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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]

#5

DATE: MAY 03 2012 Office: LOS ANGELES, CA 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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native of Iran who used a false Canadian Identification Card to enter the United States. 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). He is the spouse of a U.S. citizen. 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 November 5, 2009.

On appeal, counsel for the applicant contests the Field Office Director's conclusions and asserts that the record contains sufficient evidence to establish that a qualifying relative will experience extreme hardship due to the applicant's inadmissibility. *Form I-290B*, received December 4, 2009.

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 false Canadian Identification Card when entering the United States on October 18, 1998, and thus entered the United States by materially misrepresenting his identity. On April 30, 2000, the applicant attempted to enter the United States as a nonimmigrant in order to return to his California residence and was refused admission. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding on appeal.

The record contains, but is not limited to, the following evidence: a brief from counsel; a statement from the applicant, the applicant's spouse and members of the applicant's spouse's family; a psychological evaluation of the applicant's spouse by [redacted] dated November 30th, 2009; a statement from [redacted] dated November 23, 2009; a statement from [redacted] dated August 22, 2009; an order for CT scan by [redacted] written on a prescription slip and dated September 24, 2008; copy of a Radiograph of the Lumbar Spine, performed April 13, 2006; a statement from [redacted] dated July 12, 2009; medical records and lab reports related to the applicant's spouse; an employment offer for the applicant, dated August 14, 2009; copies of pay stubs for the applicant; copies of tax returns for the applicant and his spouse; and photographs of the applicant, his spouse and their family.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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 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 suffers from severe back and neck pain, has had back surgery and is taking several medications. Counsel explains that because of this medical history the applicant's spouse cannot maintain employment or perform daily chores and is physically dependent on the applicant. *Brief in Support of Appeal*, dated December 30, 2009. Counsel also asserts that the applicant's spouse suffers from depression and anxiety, and would experience emotional hardship due to separation if the applicant were removed.

The applicant's spouse has submitted a letter explaining that she suffers from severe back pain and is dependent on the applicant's income and physical assistance. *Statement of the Applicant's Spouse*, dated December 21, 2009. She also explains that her children are not able to provide the physical and financial support she needs to sustain herself.

The record contains numerous statements from medical doctors attesting to the applicant's spouse's back problems and listing the medications she takes to control her pain. The record also contains a number of other medical records which documents the applicant's spouse's history of back and neck problems. The documentation in the record is sufficient to establish that the applicant's spouse suffers from substantial back and neck problems. Based on this observation it can be determined that the applicant's spouse, without physical assistance, would experience an uncommon physical impact due to separation from her spouse. It can also be concluded from these records that the applicant's spouse would experience some physical hardship upon having to relocate, both due the physical demands of such a process and from the disruption of her continuity of care from the medical care providers familiar with her medical history. These factors will be given consideration when aggregating the impacts on the applicant's spouse.

Counsel has also discussed other impacts the applicant's spouse would experience due to separation, namely financial and emotional hardships. With regard to the emotional hardship, the record contains a number of statements from medical doctors and a psychological evaluation by [redacted] reviews the applicant's spouse's background and concludes that she experiencing symptoms of extreme depression and anxiety. There is also a statement from [redacted] which states that the applicant's spouse is experiencing symptoms of depression and should seek further diagnosis. The record also contains statements by the applicant's spouse's children which attest to the her physical hardships and the emotional support provided by the applicant, further corroborating the emotional impact that the applicant's inadmissibility would have on her. Based on this evidence the AAO can determine that the applicant's spouse would experience some emotional hardship if she were to remain in the United States and the applicant were removed.

In terms of financial hardship, the record contains tax returns for the applicant's spouse, as well as employment verification and pay stubs for the applicant. Although the record does not establish the financial obligations of the applicant's spouse, or that she would be unable to meet those obligations in the event the applicant were removed, the AAO notes that the tax returns submitted indicate that she would experience a substantial decrease in household income. In addition, it is reasonable to conclude that, based on the medical history of the applicant's spouse, she would have difficulty finding and maintaining employment in order to support herself. Based on the applicant's spouse's age and physical condition, the AAO will give some consideration to the financial impact on the applicant's spouse if she remained in the United States.

When the hardship impacts upon separation are considered in the aggregate, the AAO can determine that the applicant's spouse would experience an uncommon physical hardship, emotional hardship and a financial impact that would rise to the degree of extreme hardship. As such, the record establishes that a qualifying relative would experience extreme hardship upon separation. Although the applicant's spouse has established that she will experience extreme hardship due to separation, it must still be determined that she would experience extreme hardship due to relocation.

With regard to hardship upon relocation, counsel asserts that the climate conditions in Canada would result in physical hardship due to the applicant's spouse because the applicant's spouse prefers the more temperate climate of Southern California. *Brief in Support of Appeal*, dated December 30, 2009. Counsel also asserts that the applicant's spouse would experience emotional hardship having to relocate to Canada because she would be separated from her children who reside in the United States. He further asserts that the applicant's spouse would have difficulty finding employment in Canada due to her back condition and her lack of employment experience, and that she would lose her Lawful Permanent Resident (LPR) status if she relocated to Canada.

There is no indication in the record that the applicant's spouse has ever resided in Canada or has any family or other ties to Canada. The AAO recognizes that the applicant's spouse may jeopardize her status as a lawful permanent resident if she relocated to Canada and that she would have to sever the community ties and disrupt her continuity of medical care with her family doctors. The AAO also acknowledges that the applicant's spouse would be separated from her children if she relocated to Canada with the applicant. When these factors are considered in light of the applicant's spouse's medical problems and the physical impacts of relocation on her, the AAO can determine that she would experience hardship impacts rising to the level of extreme hardship upon relocation.

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 misrepresentations, unlawful presence and unauthorized employment in the United States. The factors weighing in favor of the applicant's waiver request in include the hardship that would be experienced by the applicant's spouse, the offer of employment to the applicant if he remains in the United States, his lack of any criminal record while residing in the United States and the statements in the record attesting to the his moral character. Although the applicant's misrepresentation, unlawful presence 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 not met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.