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

(b)(6)

[redacted]

DATE: JUN 2 1 2013 Office: BALTIMORE, MD [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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and was subsequently appealed to the Administrative Appeals Office (AAO), which dismissed the appeal. The matter is now before the AAO on motion. The motion will be granted and the underlying application is approved.

The record reflects that the applicant is a native and citizen of El Salvador who 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 obtaining an immigration benefit through fraud or the willful misrepresentation of a material fact. The record reflects that the applicant is married to 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, U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen husband.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated May 1, 2009.

The AAO, reviewing the applicant's Form I-601 on appeal, concurred with the District Director that extreme hardship to a qualifying relative had not been established, as required by the Act. *Decision of the AAO*, dated November 22, 2011. Consequently, the appeal was dismissed. *Id.*

On motion, counsel presents additional evidence of financial hardship that the applicant's spouse would suffer if the applicant's waiver application is not approved and also requests reconsideration of the decision to dismiss the appeal.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. According to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). As the applicant has submitted new documentary evidence to support her claim, and has stated reasons for reconsideration supported by precedent decisions, the motion to reopen and reconsider will be granted.

The record contains the following documentation: a brief filed by applicant's counsel; a letter from the president of the employer of the applicant's spouse; evidence from the applicant's spouse's company of the company's contracts and the applicant's spouse's extensive travel outside the state of Maryland; and documentation submitted in support of the applicant's initial Form I-290B, Notice of Appeal or Motion, and Form I-601, which includes, but is not limited to, briefs from counsel; tax returns, earnings statements and W-2 Wage and Tax Statements, for the applicant and her spouse; letters of employment for the applicant and her spouse; a psychological evaluation of the applicant's spouse; a medical statement and records relating to the applicant's younger son; a list of the family's expenses; and copies of recent bills. The entire record was reviewed and considered in rendering a decision on the motion to reopen.

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

> (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 [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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), 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 an applicant or other family members 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 United States Citizenship and Immigration Services (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.

In the present application the record reflects that the applicant last entered the United States on May 25, 2002, as a B-1/B-2 visitor with authorization to remain until July 15, 2002. On September 6, 2002, the applicant submitted a Form I-821, Application for Temporary Protected States (TPS), indicating that she had entered the United States on November 14, 2000. To qualify for TPS as a Salvadoran, the applicant, amongst other requirements, had to have resided continuously in the United States from February 13, 2001. The applicant's misrepresentation regarding the date of her arrival allowed her to qualify for TPS, which was granted on July 21, 2003; she thereby procured an immigration benefit through fraud or the willful misrepresentation of a material fact. In that the applicant procured an immigration benefit under the Act through fraud or the willful misrepresentation of a material fact, she is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act and must seek a waiver of the inadmissibility under section 212(i) of the Act. The applicant does not contest her inadmissibility.

In the previous decision of the AAO, the AAO found that the applicant established that her spouse would suffer hardship beyond the common results of removal if he were to relocate to El Salvador to reside with

the applicant. *Decision of the AAO*, dated November 22, 2011. That decision noted that the AAO can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. As the applicant has already established that her spouse would suffer extreme hardship in the scenario of relocation, this decision will examine whether the applicant's spouse would suffer extreme hardship in the scenario of separation.

The previous decision noted that counsel asserted that the applicant's spouse would suffer emotional and financial hardship if the applicant's waiver application were not approved, and she was removed to El Salvador. The record contains a psychological evaluation of the applicant's spouse which indicated that although the applicant's spouse does not suffer from any diagnosable psychiatric condition, the applicant and her spouse have two children and research shows that single parents have a higher incidence of depression; therefore if the applicant is removed from the United States, psychotherapy might become necessary for her spouse. Counsel further asserts that one of the applicant's children was diagnosed with an episode of cerebellar ataxia in September 2008 and that this medical problem would place physical pressure on the applicant's spouse alone should it worsen. The AAO noted, however, that the medical evidence relating to the applicant's younger son's condition was too preliminary to allow the AAO to find that he has health problems that would affect his father in the applicant's absence. With respect to financial hardship, the previous AAO decision stated that although the loss of the applicant's income would result in some level of economic hardship to her spouse, the record contains insufficient evidence to allow us to determine the extent of that hardship.

On motion, counsel submits further evidence of the financial hardship that the applicant's spouse will experience if the applicant's waiver application is not approved. The record indicates that the applicant's spouse works for a company based in Virginia specializing in waterproofing lining systems for underground structures. Counsel states that the applicant's spouse must work long hours and travel out of state. The applicant submitted copies of gasoline purchases that he made while traveling on the company's behalf to out-of-state worksites, including Maryland, Delaware, and New Jersey. A letter from the company's president of the applicant's spouse's employer states that the applicant's spouse's work requires him "to travel anywhere on a weekly basis," sometimes on a monthly basis, throughout "North America, Hawaii, and Puerto Rico." The travel records and the letter from the company's president indicate the extensive travel of the applicant's spouse for employment purposes and corroborate counsel's claims.

Counsel further contends that if the applicant's waiver application is not approved, the applicant's spouse will be forced to raise their two children as a single parent. He would bear sole responsibility for taking care of the children's school, medical appointments, childcare, food preparation, and household maintenance. Counsel further notes that the applicant's spouse is the sole source of income for the family as the applicant's spouse is not employed. In the absence of the applicant, the additional parenting responsibilities of the applicant's spouse would affect his employment status. The president of the company he works for states that if the applicant's spouse is unable to perform his duties due to the absence of the applicant, he "would be a burden" to the company and its operations. The company president adds that reducing his work hours is not an option, and that if he is no longer able to travel out

of state because he must take care of his children, "the company will have no other option than to terminate his employment."

The applicant has demonstrated that her spouse will suffer severe economic hardship if the waiver application is not approved. The economic hardship, together with indications of emotional hardship and the concern the applicant's spouse has over the medical condition of his younger child, when considered in the aggregate, are beyond the common results of removal and would rise to the level of extreme hardship if he remained in the United States without the applicant.

The AAO thus 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 extreme hardships the applicant's U.S. citizen spouse and children would face if the applicant were to reside in El Salvador, regardless of whether they accompanied the applicant or remained in the United States; the fact that applicant resided in the United States for more than ten years; and her apparent lack of a criminal record. The unfavorable factor in this matter is the applicant's willful misrepresentation of a material fact in order to procure an immigration benefit.

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, the motion to reopen will be granted and the application approved.

ORDER: The proceedings are reopened; the underlying application is approved.