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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

DATE: MAR 20 2013 OFFICE: FAIRFAX, VIRGINIA 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Fairfax, Virginia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects the applicant is a native and citizen of Bulgaria 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 having procured admission to the United States through willful misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, contests the finding of inadmissibility, and in the alternative, seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife in the United States.

The Field Office Director concluded the applicant failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated March 30, 2012.

On appeal, counsel asserts the U.S. Citizenship and Immigration Services (USCIS) erred as a matter of fact in denying the applicant's waiver application as: the applicant was neither charged nor convicted of a crime involving visa fraud; he did not participate in the filing or signing of an immigration form submitted to USCIS; and he did not have knowledge of any false statements or misrepresentations that may have been made to USCIS. Counsel also asserts USCIS erred as a matter of law as it failed to give proper weight to the evidence in the record because, in the aggregate, the evidence clearly demonstrates extreme hardship to the applicant's U.S. citizen wife. *See* Form I-290B, Notice of Appeal or Motion, dated April 26, 2012.

The record includes, but is not limited to: briefs and correspondence from current and previous counsel; letters of support; identity, psychological, medical, employment, and financial documents; photographs; and documents on conditions in Bulgaria and Bolivia.[1] The entire record, with the exception of the Bulgarian and Spanish-language documents, was reviewed and considered in rendering a decision on the appeal.

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[1] The AAO notes the record contains some documents in the Bulgarian and Spanish languages. 8 C.F.R. § 103.2(b)(3) states:

> Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As a certified translations have not been provided for all of the foreign-language documents, as required by 8 C.F.R. § 103.2(b)(3), the AAO will not consider these untranslated documents in support of the appeal.

Section 212(a)(6)(C) of the Act provides, 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 Act is inadmissible.
>
> ...
>
> (iii) Waiver Authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The Board of Immigration Appeals (BIA) has held that for immigration purposes, the term *fraud* "is used in the commonly accepted legal sense, that is, as consisting of false representations of a material fact made with knowledge of its falsity and with intent to deceive the other party." *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). The "representations must be believed and acted upon by the party deceived to the advantage of the deceiver." *Id.*

The intent to deceive is not a required element for a willful misrepresentation of a material fact. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The relevant standard for a willful misrepresentation is knowledge of falsity. *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995).

In *Kungys v. United States*, 485 U.S. 759 (1988), the Supreme Court found that the test of whether concealments or misrepresentations are "material" is whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, the legacy Immigration and Naturalization Service's (now the USCIS) decisions. Additionally, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements for a material misrepresentation are as follows:

> A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either:
>
> a. the alien is excludable on the true facts, or
> b. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (AG 1961).

The Field Office Director found the applicant inadmissible, in part, for having pled guilty and being sentenced to federal visa fraud charges on April 11, 2007. On appeal, counsel contends the applicant has never been charged or convicted of any crime in the United States. The Field Office Director also found the applicant inadmissible for having paid his previous employer,

$1,000 to obtain an extension of his P-1 nonimmigrant visa status.[2] On appeal, counsel contends the applicant was not involved with the preparation or signing of the form to extend his status, and the applicant was not even aware of the status being applied for on his behalf. Rather, he was negligent in trusting and paying an entertainment agent to handle the extension, and any alleged fraud or misrepresentation was committed by the agent and not the applicant. In support of her contention, counsel submitted a Department of Justice press release, evidencing the agent who assisted the applicant with the extension of his P-1 status was convicted on February 2, 2007 for inducing aliens to enter the United States illegally and for making false statements in visa applications.

The AAO agrees with counsel's contention regarding the applicant's alleged conviction for federal visa fraud. The record does not include any evidence the applicant has ever been convicted of such a charge. However, the AAO finds counsel's contention regarding the applicant's actions concerning the extension of his P-1 status unpersuasive. On his Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), the applicant states, in relevant part, "I entered the United States as a P-1 employee of the circus, and [] when I got here, the conditions were different so I did not stay there." And, on his G-325A, Biographic Information (Form G-325A), dated March 16, 2010, he indicates he left the around July 2005 and subsequently worked for the from around February 2006 until around August 2006. However, the record reflects that between his employment with the circus and the electric company, the applicant met with the agent for around December 2005 to extend his status in the United States. Accordingly, the AAO finds the applicant has failed to demonstrate he did not have the requisite knowledge that he was not in compliance with the requirements of the P-1 nonimmigrant visa when he met with the agent, and thereby, misrepresented his eligibility for an extension of his status in the United States. Further, the AAO finds the applicant's misrepresentation is material as it shut off a line of inquiry which is relevant to his eligibility and which might well have resulted in the proper determination that his P-1 visa not be renewed. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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

> (1) The Attorney General [now Secretary of Homeland Security (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

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[2] The record reflects the applicant was admitted initially to the United States as a P-1 nonimmigrant on July 4, 2005, valid until January 18, 2006. The AAO also notes USCIS extended the applicant's P-1 nonimmigrant status, valid from January 4, 2006 until December 31, 2006.

would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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. Hardship to the applicant and his in-laws can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only demonstrated qualifying relative in this case. 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 BIA 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 BIA 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 BIA 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 Id.* at 568; *In re 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 BIA 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 (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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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 v. I.N.S.*, 138 F.3d 1292, 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 contends the applicant's spouse would suffer extreme emotional, psychological, and financial hardship in the applicant's absence as: she has established an unusually strong bond with the applicant given her past, abusive relationship; she needs his love and support to help heal and maintain her emotional and psychological states; she has experienced and is currently in a state of depression and anxiety; she is taking two anti-depressant medications without any improvements in her symptoms and has described herself as having been suicidal; they plan to have children and have taken the initial step of getting a referral to an *in vitro* fertilization clinic as they believe their lives would be "very sad" and "incomplete" without children; she fears the effect separation would have on the applicant; he has generally and technically supported her career change from psychology to Christian ministry, which has helped with her emotional and spiritual healing; and she would be unable to maintain her current lifestyle as she would lose almost 50% of her income, and she and the applicant have a home and several other joint liabilities. In support of her contentions, counsel references unpublished decisions of the AAO[3], indicating the AAO has previously found emotional, psychological, and financial circumstances to be contributing factors in finding extreme hardship. The AAO notes its unpublished decisions are not binding, and accordingly, have no bearing on the present matter.

Additionally, the applicant indicates: he and his spouse love each other, are very happy together, and support one another in all matters; and his spouse would be unable to stay in the house they bought together, and he does not know how she would support herself. The applicant's spouse further discusses: her relationship with her ex-husband; her courtship with the applicant and her initial hesitation to be married again; the activities she and the applicant currently engage in and the depression she would experience upon separation; her efforts to become a minister; and their financial circumstances.

[3] The AAO notes its unpublished decisions are not binding, and accordingly, have no bearing on the present matter.

The record is sufficient to establish the applicant's spouse would suffer hardship in the applicant's absence. Psy.D., has diagnosed the applicant's spouse with Adjustment Disorder with Depression and Anxiety, and states she, "has a significant history of depression, having had three episodes of depressive responses to difficult situations. The first of these was when her parents separated … she was engaged to be married when her boyfriend was killed in a motor vehicle accident … Several years later, she married a man who was cold, controlling and verbally abusive, and who, on one occasion, was physically abusive." *Psychological Evaluation*, dated October 12, 2010. Additionally, MD, MPH, indicates the applicant's spouse is currently under treatment for chronic medical conditions, including hypothyroidism, and hypercholesterolemia. *See Medical Letter*, dated April 23, 2012. Although letter does not include any discussion that the applicant's presence would be advantageous in the treatment of his spouse's medical conditions, the record reflects the applicant plays an essential role in assisting his spouse with her mental wellbeing and ensuring they meet their financial obligations. Accordingly, the AAO finds, in the aggregate, the applicant's spouse would suffer extreme hardship upon separation from the applicant.

Counsel contends the applicant's spouse would suffer extreme hardship upon relocation to Bulgaria as: she suffers from several serious and potentially life-threatening conditions that require daily medications and could lead to serious conditions, including birth defects; health services are not widely available, and the quality is substantially lower than in other European Union countries and are often prohibitively expensive; she would have a difficult time finding employment as aging women are discriminated against in hiring and pay with one-half of the total female population being unemployed; she does not speak the Bulgarian language; she would be unable to pursue her career as a minister in the Methodist church as the majority of Bulgarian Christians are Eastern Orthodox, and she fears harassment and discrimination as a minority faith; her church in the United States has been a source of her spiritual and emotional healing; living conditions are extremely poor; she would be delayed in conceiving a child; and she faces physical danger as a foreign national.

Counsel also contends the applicant's spouse would suffer extreme hardship upon relocation to Bolivia as: treatment for her mental health conditions is essentially unavailable due to stigmatization and underfunding; healthcare is not widely available; the gender gap in hiring is widest in higher education brackets; she and the applicant would be forced to live in extreme poverty; and she would be delayed in conceiving a child.

The record is sufficient to establish the applicant's spouse would suffer hardship if she were to relocate to Bulgaria or Bolivia. Although she maintains family ties in Bolivia, she has strong community ties in the United States, including ongoing medical and mental health treatment, the pursuit of her ministry, and steady employment. Also, she does not have any ties to Bulgaria, and she does not speak the Bulgarian language. Additionally, the U.S. Department of State's current travel advisory for Bulgaria indicates: "While Bulgarian physicians are trained to a very high standard, most hospitals and clinics, especially in village areas, are generally not equipped and maintained to meet U.S. or Western European standards. Basic medical supplies and over-the-

counter and prescription medications are widely available, but highly specialized treatment may not be obtainable." *Travel Advisory, Bulgaria*, issued November 7, 2011. And, the U.S. Department of State's current travel advisory for Bolivia indicates: "Medical care in large cities is adequate for most purposes but of varying quality. Ambulance services are limited to non-existent. Medical facilities are generally not adequate to handle serious medical conditions." *Travel Advisory, Bolivia*, issued July 27, 2012. In the aggregate, the AAO finds the applicant's spouse would suffer extreme hardship if she were to relocate to Bulgaria or Bolivia.

Accordingly, as the applicant has shown that his spouse would suffer extreme hardship, he has established that denial of the present waiver application "would result in extreme hardship", as required for a waiver under section 212(i) of the Act.

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.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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) . . .

Id. at 301.

The BIA further stated that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and

circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.*

The favorable factors in this case include extreme hardship to the applicant's U.S. citizen spouse, the applicant's steady employment, community ties, the payment of taxes, letters of support attesting to the applicant's good moral character, and the absence of a criminal record. The unfavorable factors include the applicant's misrepresentation of his eligibility for the extension of his visa to remain in the United States and his employment without authorization.

Although the applicant's violation of immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO finds that a favorable exercise of discretion is warranted.

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 his burden and the appeal will be sustained.

ORDER: The appeal is sustained.