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

U.S. Citizenship and Immigration Services

[redacted]

DATE: NOV 19 2013 OFFICE: ST. PAUL, MN 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, St. Paul, Minnesota, and was dismissed by the Administrative Appeals Office (AAO) on appeal. The matter is now before the AAO on motion. The motion will be granted, but the prior AAO decision is affirmed. The waiver application remains denied.

The applicant is a native and citizen of the Bahamas who has resided in the United States since January 11, 2010, when she was admitted pursuant to a non-immigrant 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 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 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 child.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated December 19, 2012.

The AAO found on appeal that, although the applicant established her spouse would experience extreme hardship upon relocation to the Bahamas, she did not show that he would experience such hardship in the event of separation. *AAO Decision,* August 13, 2013.

On motion, counsel submits a brief in support, letters from a psychologist and a therapist, statements from the applicant and her spouse, and articles on depression. Counsel contests inadmissibility, stating that the applicant claimed at entry she was visiting a significant other as well as friends, and that she did not intend to hide the fact that she was visiting her spouse. Counsel additionally asserts that the spouse's documented psychological issues would cause him extreme hardship upon separation from the applicant.

The record includes, but is not limited to, the documents listed above, correspondence, financial and medical documents, statements from the applicant and her spouse, letters from family, friends, employers, and other interested parties, additional articles on stress and depression, evidence on country conditions in the Bahamas, documentation of immigration and EEOC proceedings, evidence of birth, marriage, divorce, residence, and citizenship, and other applications and petitions. The entire record was reviewed and considered in rendering a decision on the motion.

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.

Section 101(a)(15) of the Act defines a nonimmigrant B-1/B-2 visitor as:

> (B) an alien…having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

The FAM further provides:

> The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.

DOS Foreign Affairs Manual, § *41.31 N. 3.4.*

A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or

2. 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 (BIA 1960; AG 1961).

In the present case, the record reflects the applicant and her spouse married in the Bahamas on December 2, 2009. The record further reflects that on January 11, 2010 the applicant presented a non-immigrant B-2 visa to immigration officials to procure admission into the United States.

According to an inspection report, the applicant stated she was going to visit friends in Sioux Falls, South Dakota for four weeks. The applicant did not indicate she had married a U.S. citizen two months before. The record further reflects that the applicant's spouse also traveled from the Bahamas to South Dakota on another flight that same day.

Counsel contends on motion that the applicant stated she was going to visit a significant other as well as her friends, and that she wore a wedding ring on her left hand. Counsel asserts that the applicant truthfully spoke, because a husband is a significant other, and she did in fact visit her friends. The applicant confirms this, and reiterates that she decided to stay in the United States only after her spouse encountered personal and professional problems. Counsel moreover asserts that a previously submitted letter from [redacted] confirms that the applicant visited friends she met in the Bahamas.

As noted on appeal, in visa petition proceedings the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

In this case, the applicant has not met her burden of proof in demonstrating that she did not intend to remain in the United States when she presented herself as a nonimmigrant. Though the applicant contends she informed the immigration official she was visiting her significant other, the inspection report does not reflect that she stated this. Rather, as stated above, the report indicates she only said she was visiting friends she met in the Bahamas. Furthermore, even if the applicant was wearing a wedding ring, and she told the immigration official that she was visiting a significant other, the applicant did not indicate she was married to a U.S. citizen, or that she intended to visit her spouse. If the applicant had disclosed this information, the immigration official may have inquired about her intent to live with her U.S. citizen spouse, and consequently, her eligibility for admission as a nonimmigrant. Additionally, failure to disclose that information is viewed in light of subsequent events which include the applicant's reunification with her spouse, who arrived in the United States the same day from the Bahamas on a separate flight, and the fact that she immediately began living with her spouse in South Dakota in January 2010. *See Form G325A, Biographic Information.* These events indicate the applicant did not intend to visit the United States temporarily, but rather, that she misrepresented her intentions to the inspecting official. Furthermore, contrary to counsel's assertion the letter from [redacted] does not indicate that the applicant visited him and his spouse in South Dakota, only that he knows the applicant and has traveled and visited her spouse in the Bahamas. [redacted] August 27, 2011.

Given the evidence of record, the AAO affirms that the applicant was an intending immigrant when she presented herself for admission as a nonimmigrant on January 11, 2010. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. The applicant's qualifying relative 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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 states he would experience exacerbated psychological hardship if he were separated from the applicant. He explains he is spiritually and emotionally rooted in the applicant, and experiences emotional rage when he thinks about possible separation. The spouse asserts he has been seeing a psychiatrist since January 2013, and he and the applicant have also seen a licensed marriage and family therapist. He adds that the applicant has taught him that he needs to take care of himself, and to love himself, the applicant, his children, and his patients. The applicant submits a letter from a psychiatrist in support. Therein, the psychiatrist confirms the spouse has been a patient since January 2013, he has been diagnosed with depressive disorder, and he struggles with anxiety and impulsivity. The psychiatrist adds that the spouse has had work stressors, and that he is compliant with treatment which includes medication and psychotherapy. The psychiatrist opines that the spouse will experience extreme hardship if he were separated from the applicant, and that it would have a significant impact on his "emotional liability." [redacted] September 6, 2013. The psychiatrist adds that separation would have a cascading effect on the spouse, in that his employment and ultimately his financial situation would be compromised due to the lack of family support. The licensed marriage and family therapist states that the applicant provides the spouse with emotional stability and security, and that separation would negatively impact his emotional state and compromise his well-being. [redacted] August 30, 2013. Articles on depression and anxiety are also submitted in support.

The AAO found on appeal that the spouse would experience emotional difficulties due to the demands of his profession and the prospect of separation from the applicant and their son. The applicant has submitted new evidence indicating he was diagnosed with depressive disorder and anxiety. The record also reflects that the applicant is compliant with a treatment plan including medication and psychotherapy. The applicant has additionally provided sufficient evidence establishing she provides emotional support and stability to her spouse. However, without more, these projected psychological difficulties are insufficient to demonstrate that the spouse's hardship is above and beyond that of other relatives of inadmissible aliens. Moreover, the applicant has not shown that her spouse's treatment plan, as well as support from other family members in the United States would be insufficient in helping alleviate his psychological difficulties.

The applicant has demonstrated that her spouse has psychological and emotional problems due to the demands of his profession and the possibility of separation from the applicant and their son. However, the applicant has not submitted sufficient evidence to establish that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to show the psychological or other impacts of separation on the applicant's spouse are in the aggregate above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant returns to the Bahamas without her spouse.

The AAO previously found the applicant's spouse would experience extreme hardship in the event of relocation. As there is no documentation of record indicating this finding should be overturned, the AAO affirms that the spouse would experience extreme hardship upon relocation to the Bahamas.

As noted on appeal, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. Citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the motion is granted, but the prior decision of the AAO is affirmed.

ORDER: The motion is granted, but the prior decision of the AAO is affirmed.