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)

DATE: JUN 2 5 2014 Office: LOS ANGELES File:

IN RE: Applicant:

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

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.

Thank you,

for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, California, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of Belize 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 procuring or attempting to procure admission to the United States by fraud or misrepresentation by falsely claiming to be a citizen[1] of the United States. She seeks a waiver of inadmissibility in order to remain in the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by her husband.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director,* July 1, 2013.

On appeal, counsel for the applicant contends that USCIS erred in finding the applicant failed to provide sufficient evidence her husband would experience extreme hardship if she is unable to reside in the United States. The record contains documentation including, but not limited to: hardship and supportive statements; financial information, such as tax documents, bank statements, a lease, rental receipts, and utility bills; medical records and a psychological evaluation; birth, marriage, death, and divorce certificates; photographs; and prior immigrant petitions and benefits applications. The entire record was reviewed and considered in rendering this decision.

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

> 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)(1) of the Act provides:

> 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 [...].

The record reflects that the applicant tried to enter the United States on June 10, 1983 using a U.S. birth certificate belonging to another person, was paroled into the country for prosecution purposes and placed into detention, and pled guilty. Thereafter, according to the record, she withdrew her

[1] Because the false citizenship claim occurred before September 30, 1996, the applicant is not inadmissible under section 212(a)(6)(C)(ii) of the Act relating to false claims to U.S. citizenship.

application for admission and departed back to Belize on or about July 8, 1983. She subsequently entered the country several times after 1997 using a valid visitor's visa and has not left since her March 7, 2000 entry.

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 U.S. citizen 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

Regarding whether the applicant has established that a qualifying relative would suffer extreme hardship by relocating, the record reflects that the cumulative effect of problems that would impact her husband amounts to hardship that rises to the level of extreme. The record shows that the qualifying relative was born, raised, and resides in southern California. He claims never to have visited Belize and to have no knowledge of or ties to the country. He asserts having a strong bond to a sister here, as well as to his mother, who is diabetic, over 80 years old, and lives nearby. The qualifying relative's mother confirms that she relies on her son and daughter-in-law to check her blood sugar, give her insulin injections, prepare meals, do household chores, and bathe her. Her son fears that, if he departs to be with the applicant, his mother will not long survive his absence. A psychologist notes these concerns, and also observes that the applicant's husband fears the financial consequences of leaving a stable job with health insurance benefits and entering the job market overseas at the age of 60.

Based on the totality of the circumstances, the evidence is sufficient to establish that a qualifying relative would experience extreme hardship by moving to Belize. Besides severing ties with his longstanding employer, relocating would deprive the applicant's husband of contact with his church, friends in the community, and extended family members and of the opportunity to help an aging mother in declining health, thereby adding stress to his mental health burden.

Regarding the claim of hardship due to separation, the record also contains sufficient evidence that the applicant's absence will cause a qualifying relative distress beyond what commonly results from the inadmissibility of a beloved spouse. The applicant's husband claims that concern about his wife's immigration problem has caused him stress and anxiety, worry that he will lose his job, and fear about meeting his financial obligations. The applicant provides a psychologist's evaluation noting her husband's insomnia and related concentration/memory problems, diagnosing him with anxiety and depression, and recommending several therapeutic options (including medical evaluation for possible pharmacological treatment) as beneficial to help him cope with his wife's

absence. *See Psychological Assessment,* June 18, 2012. Further, the applicant's husband reports that in 2011 he married the applicant, a longstanding family friend, only after his previous wife of 16 years died in 2010 after a long battle with multiple sclerosis. The psychologist confirms that caring for his wife as she deteriorated left the qualifying relative emotionally and physically exhausted, her death caused him to become despondent, the applicant's support during this period was key to restoring her husband's psychological health, and he thus needs his wife's companionship. The record reflects that the qualifying relative and the applicant are co-parenting the applicant's three children, one about to graduate high school and two college students. The applicant's husband states that fear of being the sole caretaker of three children and his mother heightens his anxiety over an already stressful immigration situation involving his wife. There is ample evidence that, due to the circumstances of his first wife's death and the applicant's role in helping him recover, losing the applicant would impact her husband beyond the usual or typical result of separation, regardless of his ability to visit her overseas.

While the record shows the couple sharing parenting responsibilities for the applicant's three adult children, ages 18, 21, and 24, it reflects that the applicant's husband is the primary wage earner of the household, with reported 2011 gross income exceeding $70,000. Support letters indicate that the applicant has also worked as a caregiver, though there is no documentation of her income. We note that documented expenses include college expenses for two of the applicant's children and remittances to the applicant's mother in Belize.

Documentation suggests that the applicant was scheduled for surgical removal of an adnexal mass in one of her ovaries in May 2012. Although there is no updated evidence regarding the applicant's current condition, her spouse indicates that her doctors state she is at increased risk of developing ovarian cancer, and he expresses concern that she would not have access to adequate treatment in Belize. He states that he already lost one wife to serious illness and fears losing the applicant.

Based on the totality of the circumstances, the evidence is sufficient to establish that a qualifying relative would experience extreme hardship if the applicant is unable to remain in the United States, thereby depriving her husband of his current wife and companion who played a pivotal role in helping him overcome the grief and despair at losing his first wife.

The documentation on record, when considered in its totality, reflects the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, we find 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).

We 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 husband will face if the applicant leaves the country, regardless of whether he joins the applicant or remains here; the applicant's over 30-year residence in the United States and three children living here; passage of over 30 years since she falsely claimed U.S. citizenship at the age of 20; history of visa issuance and lawful admission; and employment as a home caregiver and supportive statements from employers. The unfavorable factors in this matter concern the applicant's fraudulent use of another person's U.S. birth certificate and false claim to citizenship.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. 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.

ORDER: The appeal is sustained.