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: MAR 24 2014 Office: NEWARK

IN RE: Applicant:

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:

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,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The record establishes that the applicant is a native and citizen of Trinidad and Tobago who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her lawful permanent resident spouse and two U.S. citizen sons, born in 1980 and 1993.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director,* dated July 28, 2012.

In support of the appeal counsel for the applicant submits a brief. The entire record was reviewed and considered in rendering this decision.

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.
>
> . . . .
>
> (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

> (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 . . .

With respect to the field office director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, the record establishes that the applicant applied for permanent residency based on sponsorship by her alleged daughter, [redacted] Specifically, the applicant claimed [redacted], a U.S. citizen, as her daughter on Part 3 of

the Form I-485, Application to Register Permanent Residence or Adjust Status (I-485) that she signed on April 16, 2001. On appeal, counsel asserts that the applicant was referred to an agency who filed a fraudulent Form I-130, Petition for Alien Relative (Form I-130), listing [redacted] as the petitioner and the applicant as her parent and beneficiary. Counsel maintains that the applicant did not know about this petition until she appeared for the I-485 interview and she was not aware that an I-130 has been submitted on her behalf because she did not sign the fraudulent I-130 petition nor did she review it. *See Brief in Support of Appeal,* dated November 7, 2012.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

> A misrepresentation . . . 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 a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States,* 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

By [redacted] as her U.S. born adult daughter on the Form I-485, the applicant led the USCIS to believe that she had a U.S. citizen daughter who was eligible to sponsor her for permanent resident status. The AAO notes that despite counsel's and the applicant's assertion that it was the agent who misrepresented the applicant's status as a parent of a U.S. citizen, the record establishes that the applicant signed the Form I-485, under penalty of perjury, indicating that she had a daughter, [redacted] who had been born in the United States on August 16, 1979. The applicant had the duty and the responsibility to review the form and compiled documentation (and obtain translations if anything was not clear to her) prior to submission. As such, the AAO concurs with the field office director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation.

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. The applicant's lawful permanent resident spouse is the only qualifying relative in this case. Hardship to the applicant or her U.S. citizen sons can be considered only insofar as it results in hardship to a qualifying relative. 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 v. I.N.S.*, 138 F.3d 1292, 1293 (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 lawful permanent resident spouse asserts that he will suffer emotional, medical and financial hardship were he to remain in the United States while the applicant relocates abroad due to her inadmissibility. In a declaration he explains that he married the applicant in 1979. He contends that they have remained together for over three decades and had two children together and long-term separation from the applicant would cause him hardship. Further, the applicant's spouse explains that he had a heart attack in 2009 and his wife played a critical role in caring for him and giving him the strength and encouragement he needed to heal and recover. The applicant's spouse maintains that as a result of his heart attack and stent placement to help reduce the blockage to his heart, he needs continued care and treatment and without his wife's daily presence and care, he will experience hardship. Additionally, the applicant's spouse maintains that his wife would not be able to obtain gainful employment in Trinidad and Tobago and having to financially support her and spend money to visit her abroad would cause him financial hardship. *See Affidavit from* dated April 29, 2011.

In support, counsel has provided evidence that the applicant and his spouse have been married for almost 35 years and are parents to two U.S. citizen sons. Further, documentation provided establishes that the applicant's spouse is being monitored and treated for his heart after stent placement and is receiving injectable therapy in his left eye for a juxtapapillary choroidal neovascular membrane. Finally, financial documentation establishes that the applicant contributes over 50 percent of the household income. The record establishes that the applicant and her spouse have been married for over three decades. The applicant's spouse is over fifty years old. The AAO finds that the cumulative effect of the emotional, medical and financial hardship the applicant's spouse will experience were the applicant to relocate abroad as a result of her inadmissibility rises to the level of extreme. A prolonged separation at this time would cause hardship beyond that normally expected of one facing the removal of a spouse. The AAO thus concludes that were the applicant unable to reside in the United States due to her inadmissibility, the applicant's spouse would suffer extreme hardship if he remains in the United States.

Extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. To begin, the applicant's lawful permanent resident spouse explains that he has been residing in the United States for over two decades and long-term separation from his community, his children, one who lives with him and the applicant, his grandchildren, his home, and his long-term gainful employment would cause him hardship. He further maintains that finding affordable and effective health care coverage and gainful

employment in Trinidad and Tobago would be difficult. The record establishes that the applicant's spouse has been residing in the United States for over 20 years. He has been gainfully employed on a long-term basis by Waste Management. The U.S. Department of State confirms that violent crime remains high and medical care is significantly below U.S. standards for treatment of serious injuries and illness, with limited access to supplies and medications. *See Country Specific Information-Trinidad and Tobago, U. S. Department of State,* dated May 9, 2013. Based on the applicant's spouse's extensive and long-term ties to the United States and the problematic country conditions in Trinidad and Tobago, the applicant has established that her spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her lawful permanent resident spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO 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 hardship the applicant's lawful permanent resident spouse and U.S. citizen children would face if the applicant were to relocate to Trinidad and Tobago, regardless of whether they accompanied the applicant or stayed in the United States; community ties; the presence of grandchildren; home ownership; the payment of taxes; the applicant's gainful employment, since 1992, with [redacted] the apparent lack of a criminal record; and the passage of more than a decade since the applicant's fraud or willful misrepresentation. The unfavorable factors in this matter are the applicant's nonimmigrant visa overstay, periods of unlawful presence and employment while in the United States, the applicant's placement in removal proceedings and fraud or willful misrepresentation as outlined in detail above.

The violations committed by the applicant are 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 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 been met.

ORDER: The appeal is sustained.