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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

Date: MAY 07 2014 Office: SAN JOSE FILE:

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, San Jose, California, and an appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on motion. The motion will be granted and the prior decision of the AAO is withdrawn.

The applicant is a native and citizen of Vietnam who 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 attempted to procure a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. The applicant is applying for 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 three children, born in 1999, 2002 and 2012.

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 Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director,* dated November 28, 2012.

On appeal, the AAO determined that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The appeal was subsequently dismissed. *Decision of the AAO,* dated October 4, 2013.

On motion, counsel for the applicant submits the following: a brief, documentation establishing the applicant's two children's U.S. citizenship and school enrollment, financial documentation, a statement from the applicant's spouse's sibling, medical documentation pertaining to the applicant's children, mental health documentation pertaining to the applicant's spouse; information about country conditions in Vietnam, and statements from the applicant's spouse and eldest child. The entire record was reviewed and considered in rendering this decision.

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:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), 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 (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…

With respect to the field office director's finding that the applicant is inadmissible under section 212(a)(6)(C) of the Act for fraud or willful misrepresentation, the record establishes that a K-1 Petition for Alien Fiancée (Form I-129F) was filed on the applicant's behalf by her previous brother-in-law, in August 2001. Pursuant to the applicant's own admission, she acknowledged that she was aware that her previous brother-in-law had submitted a K-1 petition on her behalf and confirmed that she had no intention of marrying her previous brother-in-law upon entering the United States because she wanted to reunite with her ex-husband. She maintained that she was told that her brother-in-law would help her come to the United States by way of a fiancé petition. *See Record of Sworn Statement in Administration Proceedings,* dated May 12, 2011. On motion, counsel does not contest the applicant's fraud or willful misrepresentation with respect to the K-1 visa application. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for having attempted to procure a K-1 visa by 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 U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or their three children 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 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.

On appeal, the AAO found that the applicant's spouse had not established that he would experience extreme hardship were he to remain in the United States while the applicant relocated abroad as a result of her inadmissibilty. *Supra* at 5-6. On motion, the issues raised by the AAO have been addressed. To begin, counsel has submitted evidence establishing that the applicant's spouse's three children are now residing in the United States. Two of the applicant's children, [redacted] and [redacted], recently immigrated to the United States in 2013 and are enrolled in school for the 2013-2014 school year and one child, [redacted] was born in the United States. Further, the applicant has established that both [redacted] and [redacted] are obtaining medical treatment in the United States as they have been identified as having evidence of tuberculosis. Moreover, a letter has ben provided from [redacted] outlining the hardships she and her brother experienced while being separted from their parents in Vietnam and expressing her happiness and gratitude that the family is finally together in the United States. Additionally, counsel has provided documentation establishing that although the applicant's spouse is gainfully employed, he earns significantly less than the 2013 Poverty Guildelines threshold and thus would not have the financial ability to obtain child care coverage for the children or pay for plane tickets to visit the applicant in Vietnam. A letter has also been provided from the applicant's

spouse's sister detailing that none of the spouse's siblings have the ability to care for the children as they have their own obligations and limitations. This letter also details the hardships the applicant's spouse would experience were he to become primary caregiver to three young children, two who recently immigrated to the United States, without the applicant's daily presence and support. Finally, the applicant has submitted evidence establishing that her husband is being treated for depression and needs to be under the applicant's care and supervision to maintain his daily activities. Based on a totality of the circumstances, the applicant has established on motion that her U.S. citizen spouse would experience extreme hardship were he to remain in the United States while the applicant relocates abroad as a result of her inadmissibility.

In regard to establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, the AAO found that no supporting documentation had been provided to support the applicant's spouse's assertions that he would experience extreme hardship in Vietnam. *Supra* at 6. On motion, counsel details that the applicant's spouse has been residing in the United States since 1999. He has extensive family ties in the United States, including the presence of three children and siblings. In addition, the record establishes that the applicant's spouse has been gainfully employed for many years as a dental lab technician in the United States. Furthermore, documentation in the record establishes that the applicant's spouse is blind in the left eye and suffers from allergies that cause problems to his right eye and consequently, he needs continued medical follow-up and treatment. Finally, as evidenced by counsel, the applicant's U.S. citizen children need to receive affordable and effective treatment for tuberculosis. Counsel has submitted articles regarding country conditions in Vietnam, including the inability of disabled people in Vietnam to obtain gainful employment, human rights problems, economic woes and substandard medical care. The U.S. Department of State confirms that medical facilities in Vietnam do not meet international standards and frequently lack medicines and supplies. *Country Specific Information-Vietnam, U.S. Department of State,* dated July 9, 2013. The applicant has established on motion that her U.S. citizen 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 on motion that her U.S. citizen 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 for purposes of a 212(i) waiver. 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 U.S. citizen spouse and three children would face if the applicant were to relocate to Vietnam, regardless of whether they accompanied the applicant or stayed in the United States; community ties; the payment of taxes; 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 periods of unlawful presence in the United States and fraud or willful misrepresentation as outlined above.

Although the violations committed by the applicant are serious in nature, 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 motion will be granted and the prior decision of the AAO will be withdrawn.