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

U.S. Citizenship and Immigration Services

[redacted]

DATE: MAY 13 2014 Office: TAMPA, FL FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Tampa, Florida, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Russia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant is not inadmissible because she did not misrepresent a material fact. Alternatively, counsel contends the applicant established extreme hardship to her husband, particularly considering he suffers from post-traumatic stress disorder (PTSD) and recurrent skin cancer, and has an established thirty-year career as a Professor in the United States.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, Dr. [redacted] indicating they were married on September 8, 2012; a declaration from the applicant; a declaration from Dr. [redacted] a mental health evaluation; an affidavit from Dr. [redacted]'s mother; copies of medical records; copies of tax returns and other financial documents; letters of support; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for Russia and other background materials; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

> 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.

Section 212(i) provides, in pertinent part:

> (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . . .

In this case, the record shows, and the applicant concedes, that on her non-immigrant visa application, she indicated she was married even though she was divorced so that she would have a better chance of getting a non-immigration visa. Counsel contends this misrepresentation was not material because the applicant presented sufficient evidence of her permanent residence in Russia and her intent to return home after a temporary visit to the United States.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . . ."). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

After a careful review of the record, the AAO finds that the applicant has not met her burden of proving she is admissible to the United States. The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1960; AG 1961), as follows:

> A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:
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> 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.

In this case, the misrepresentation was material because it shut off a line of inquiry relevant to the applicant's eligibility for a non-immigrant visa. Specifically, the applicant's non-immigrant visa application may have been denied had the consular officer known the applicant was no longer married to her Russian husband. As the applicant herself conceded in her sworn statement, her claim that she was married to a Russian citizen gave her a better chance of getting a non-immigrant visa. Therefore, the record establishes that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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*, 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.

In this case, the applicant's husband, Dr. , states that his wife is his best friend and that he will be devastated if her waiver application is denied. According to Dr. he has had many significant losses throughout his life and suffers from PTSD. He states his mother gave birth to him when she was sixteen years old and left him to be raised by his father who was an alcoholic. He states that it has taken many years, but that he now has a relationship with his mother and his sister. In addition, Dr.

contends he was previously married for seven years and that his world was shattered when the marriage ended in divorce, especially because he was prevented from having any contact with his two stepsons whom he helped raise. He also states that shortly after the divorce, his father passed away from heart failure, and then he himself was diagnosed with skin cancer which has come back twice since its initial onset in 2002. Furthermore, Dr. states that his ex-girlfriend of six years unexpectedly passed away in December 2009 and he feels guilty he could not prevent her death. He claims he was recently hospitalized, experienced another anxiety attack shortly after his hospitalization, and contends his wife takes care of him. Moreover, Dr. claims he cannot relocate to Russia to be with his wife because he gets quarterly skin checks with his dermatologist and would not have health insurance or proper medical care in Russia. He also contends he does not speak Russian, has never been to Russia, and has lived in the United States his entire life. He states he has spent over thirty years earning a PhD and developing a career in the United States that he would have to leave if he relocated to Russia.

After a careful review of the entire record, the AAO finds that if the applicant's husband, Dr. relocated to Russia to be with his wife, he would experience extreme hardship. The record shows that Dr. is currently fifty-seven years old and the AAO recognizes his contention that he has never been to Russia and does not speak Russian. The record also contains documentation corroborating his claims that he has been diagnosed with PTSD and skin cancer, and the he has established a career as a Professor teaching Criminology, currently serving as the Chair of the Department of Criminology at the The applicant has submitted an article addressing inadequate health care in Russia and the AAO acknowledges that relocating to Russia would entail Dr. leaving his employment and all of its benefits, including health insurance. Considering these unique factors cumulatively, the AAO finds that the hardship Dr. would experience if he relocated to Russia to be with his wife is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

The AAO also finds that if the applicant's husband remains in the United States without his wife, he would suffer extreme hardship. As stated above, the record contains a mental health evaluation diagnosing Dr. with PTSD. According to the counselor, Dr. did not grow up with his mother, saw her only once a year at Christmas time, and, as a result, has had many relationships with women in which he tends to get very committed and attached quickly, fully committing himself in order to preserve intimacy with mother-like figures. The counselor contends that the termination of these relationships feels like losing his mother all over again. In addition, according to the counselor, Dr. is still grieving the many losses in his life, particularly the death of his girlfriend from an accidental drug overdose. The counselor concludes that Dr. would be psychologically devastated if his wife departed the United States. Letters of support in the record, including from several individuals who have known Dr. for decades, also emphasize how the applicant has helped Dr. re-engage in life after many difficult years and that their separation would be a crippling blow, causing friends and coworkers to be worried about Dr. 's mental state. Considering the unique circumstances in this matter cumulatively, the AAO finds that the hardship the applicant's husband would experience if he remains in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case includes the applicant's misrepresentation of a material fact to procure an immigration benefit. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including her U.S. citizen husband; the extreme hardship to the applicant's husband if she were refused admission; letters of support describing the applicant as a caring, trustworthy, and kind person of great moral value; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

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.