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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: NOV 13 2014 Office: ST. ALBANS 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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, St. Albans, Vermont. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant, a native and citizen of Brazil, 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 procuring admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with her U.S. citizen spouse and daughter.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative if she was separated from him, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director,* March 18, 2014.

On appeal, counsel contends that the applicant's spouse will suffer extreme hardship if the application is denied, asserts that the record establishes the remorse and rehabilitation of the applicant, and submits additional evidence of hardship to the applicant's spouse.

The record includes, but is not limited to, the following documentation: a brief filed by counsel in support of the Form I-290B, Notice of Appeal or Motion; a brief filed by the applicant's former counsel in reply to a Notice of Intent to Deny; an affidavit from the applicant; affidavits and statements from the applicant's spouse; financial documentation; a letter from a licensed psychologist regarding the emotional hardship to the applicant's spouse; letters of reference; and country-conditions information on Brazil. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The applicant states that she applied for a non-immigrant visitor's visa to the United States in 1999, which was denied. The applicant states that her ex-husband obtained a false birth certificate which he used to get the applicant a passport. In 2000, the applicant used the passport with the false identity to apply for a non-immigrant visa, which was approved. The applicant entered the United States in July 2000 using the false identity, and remained in the United States after the period of lawful entry expired. The applicant does not contest her inadmissibility.

Section 212(i) of the Act provides that:

> 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 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 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 husband is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, USCIS does consider a child's hardship a factor in determining whether a qualifying relative experiences extreme hardship. 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. 1993), (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 Field Office Director determined that the applicant established that her qualifying relative would experience extreme hardship if he were to relocate to Brazil to be with the applicant. The applicant's spouse was born in the United States, and has strong family ties in the United States, including his mother and three siblings. He does not speak Portuguese, and is unfamiliar with the culture and customs of Brazil.

In addition, counsel states that the applicant's spouse would have difficulty finding employment in Brazil. The record establishes that the applicant's spouse has established his career in the highly-specialized semiconductor computational lithography field based upon his educational background and experience. The applicant's spouse states that there is no semiconductor industry in Brazil, and therefore the hardship that he would experience relocating to Brazil would include abandoning his career in an occupation for which he has studied and worked for several years in order to achieve success.

Based on the evidence in the record, we concur with the Field Office Director's determination that the applicant has established that her spouse would suffer hardships that, when considered in the

aggregate, are beyond the common results of removal if he were to relocate to Brazil to reside with the applicant.

With respect to the hardship that the applicant's spouse would experience if he were separated from the applicant, counsel contends that the applicant's spouse will suffer financial hardship if the waiver application is not approved. The record indicates that the applicant's spouse is employed as a computational lithographer, and a letter for his employer indicates that he earns a salary of $108,720 per year.

The letter from the employer further states that the applicant is employed in a highly specialized field, which requires him to work from 8:00 am to 6:00 pm, and often requires him to be available in the late evenings in order to interact with other members of the company who are located overseas. The applicant's spouse states that he would have a large financial burden to bear by putting his daughter into daycare, and as he often has to work late, he would have to hire a babysitter to care for his daughter. He adds that because his job is very demanding, his inability to spend time with his daughter and raise her properly would cause him considerable stress.

Counsel further contends that the applicant's spouse has become increasingly worried and depressed over the applicant's immigration situation and is unable to focus his attention on his job. In support of this contention, counsel submits a letter from a licensed psychologist, stating that he conducted five sessions with the applicant's spouse. The psychologist notes that the applicant experienced some instability in his own family, and states that the prospect of separating from his spouse and child is emotionally upsetting and constantly on his mind. The letter from the applicant's employer states that the engineers working for the company need to be technically focused, responsive at all times to company needs, and dedicated to their work. The psychologist notes that the applicant's spouse's constant worrying over the applicant's immigration status has affected his job performance, stating that there have been recent incidents at work where he has made some mistakes, causing further distress. The psychologist provided a diagnosis of applicant's spouse having an adjustment disorder with depression and anxiety, and indicated that this condition is likely to continue in the foreseeable future, with a probable escalation to clinical depression.

The record establishes that if the waiver application were denied, the applicant's spouse would experience psychological hardships due to the separation from the applicant and the difficulties he would face in adequately preforming his duties in a highly specialized job field. In addition, the applicant's spouse would experience financial hardships relating to finding adequate care for his daughter. These hardships, when considered in the aggregate, are beyond the common results of removal and would rise to the level of extreme hardship if he remained in the United States without the applicant.

Thus, considered in the aggregate, the record evidence establishes that the situation presented in this application rises to the level of extreme hardship to the applicant's spouse whether he remains in the United States or relocates to Brazil with her. 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 U.S. citizen spouse and daughter would face if the applicant were returned to Brazil, regardless of whether they accompanied her or remained in the United States; the fact that the applicant has resided in the United States for more than 14 years; the applicant's apparent lack of a criminal record; and letters of reference on her behalf. The unfavorable factor in this matter is her unlawful entry the United States.

The immigration violation committed by the applicant is serious in nature. Nonetheless, we find 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.