U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: OCT 27 2014 Office: MIAMI FIELD OFFICE 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 Field Office Director, Miami, 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 Romania 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 procuring admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director* dated April 21, 2014.

On appeal counsel for the applicant contends that the field office director failed to adequately consider the evidence or explain why it does not amount to extreme hardship. With the appeal counsel submits a brief, updated statements from the applicant and her spouse, medical prescription records for the applicant's spouse, letters from physicians for the applicant, a psychological evaluation of the applicant, financial documentation, and additional country information for Romania. The record contains letters of support from family, friends, and business colleagues of the applicant and her spouse as well as mental health evaluations of the applicant's spouse, medical documentation for the applicant, previously-submitted financial documentation, country information for Romania, and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). 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.

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.

The record reflects that the applicant entered the United States in 2001 via the visa waiver program using an altered French passport issued in another name. Based on this information the field office director determined that the applicant was inadmissible for misrepresentation. Neither counsel nor the applicant has contested the finding of inadmissibility.

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 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 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. *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)); *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 counsel asserts that the applicant's spouse will suffer extreme emotional, medical, and financial hardship due to separation from the applicant. Counsel states that the spouse was diagnosed with ADHD (attention deficit hyperactivity disorder) and dyslexia as a child and has undergone extensive long-term treatment. Counsel asserts that the spouse's success as the owner of a marine business is largely due to the applicant's support of the business and for the spouse dealing with his psychological issues.

The applicant's spouse states that he has a history of mental health issues since he was eight years old and has seen a psychologist for weekly therapeutic services and taken antidepressants since 2005. The spouse's mother states that the applicant is able to share a bond with her son that no one else ever has and gives him a safe place where he can face his psychological and emotional issues. The applicant's spouse states that the applicant guides him through his struggles and helps with the business. He states that the applicant is supportive and gives him confidence and has changed his life by keeping him focused on creating his own business. The spouse states that ADHD and dyslexia made it impossible for him to see tasks through until he had the applicant's help, and that he cannot keep his business and his employees without the applicant's help.

The applicant states that with ADHD and dyslexia her spouse cannot manage the business himself, and she handles all administrative duties and written interactions with clients and contractors. Letters from business colleagues also observe that the spouse needs the applicant to function in his business. The applicant states that her spouse would struggle to keep the business without her and that he would have to deal with his depression and anxiety alone while needing to send money to her in Romania, where they already send money to her mother.

An evaluation by a mental health counselor assesses the applicant's spouse with symptoms of major depressive disorder. The evaluation states that he has a history since childhood of ADHD with mood and anxiety problems and now complains of worsening anxiety. It states that the spouse

reports difficulty concentrating at work, having disrupted sleep and a resurgence of anxiety experienced in his childhood, being irritable and restless, and having panic symptoms. It states that he then avoids work, so the applicant facilitates important business functions and is the main source of support for the spouse's business and overall health.

A letter from a psychologist states that the applicant's spouse has been under care since 2005 with regular therapy sessions, but that progress had been slow until improving since the applicant entered his life. The letter states that if the applicant is separated from her spouse it would exacerbate the symptoms that initially caused him to need treatment. A letter from a medical doctor states that the applicant's spouse has been a patient since 2007, being treated for major depressive disorder and generalized anxiety disorder. The letter states that the spouse relies on the applicant for emotional support and that separation would risk exacerbation of symptoms.

Counsel asserts that the applicant also suffers from major depressive disorder and a panic disorder, for which she receives therapy, but could not receive the same level of treatment in Romania. Country information submitted to the record by counsel shows that Romania has a substandard health care system subject to corruption and with a shortage of medical staff as qualified medical people are leaving the country. The spouse states that the applicant's anxiety has worsened, that she receives therapy, and that when he is away from the applicant he constantly calls to make sure she is okay. Medical records and letters from physicians for the applicant indicate that she is seen for a panic disorder with cardiovascular symptoms, palpitations, and anxiety for which she has been prescribed medication. A psychiatric evaluation of the applicant states that she reports having anxiety and depression for many years and has started having panic attacks. The evaluation states that the applicant feels overwhelmed and guilty for letting down her spouse by not being strong enough to provide support for him now as in the past. It states that the applicant's inability to conceive a child affects her anxiety and that she had thoughts of suicide but would not act on these thoughts because her mother depends on her financially. The evaluation states that the applicant had a history of physical and emotional abuse as a child, and her fear of separation may lead to behavior detrimental to her health and a feeling that her deportation would affect her spouse's mental health. The evaluation surmises that this could lead to psychiatric hospitalization of the applicant to prevent self-harm.

We find that the record establishes that the applicant's spouse will suffer extreme hardship as a consequence of being separated from the applicant. The record shows that the spouse has a history of mental health issues that the applicant helps him overcome to function professionally. The record also shows that the applicant suffers mental health issues which, if she were to reside in Romania, would cause concern to her spouse due to the likely lack of adequate care for her and his own experience with mental health issues. The record further establishes that given the economic situation there and the fact that the applicant and her spouse already provide financial support for the applicant's mother, it is likely that the applicant's spouse would be supporting two households.

We also find that the record establishes that the applicant's spouse would experience extreme hardship if he were to relocate to Romania to reside with the applicant. Counsel asserts that in Romania it is unlikely the applicant's spouse can find similar employment because other than a

small coast the country is landlocked. Counsel also asserts that it is unlikely the spouse could become proficient in the language given his mental health issues, making him unemployable in Romania. A mental health evaluation also states that the spouse's history of learning disabilities would interfere with his ability to learn a new language or a new trade. The applicant states that conditions in Romania are dismal, jobs are scarce, pay is low, and citizens are desperate to leave the country to find work. The applicant's spouse states that relocating to Romania would be the end of his livelihood as there is no market for a marine business where the applicant's mother lives. The applicant's mother writes that she cannot survive in Romania without financial support from the applicant because of the country's economic crisis and that the applicant's spouse could not accommodate conditions where basic necessities are not available.

The applicant's spouse states that he has lived his entire life in the United States and would have to leave a large family, including his parents, grandparents, siblings, and extended family. He states that he would be jobless, isolated, and unfamiliar with the language and culture. The applicant states that her spouse lost time with his father due to his parent's divorce when he was young and that he is now closer to his father, especially since his father had a stroke, and that he would be devastated if unable to get to his father's side. She states that in Romania her spouse would live in poverty and be away from everything he has ever known. The applicant states that with ADHD it is unlikely her spouse could learn the language so he would be unemployable and have no means of support there, and would have no therapist for his mental health issues.

The applicant and her spouse state that they want to start a family but would need in-vitro fertilization to conceive, and in Romania medical care is unsophisticated, substandard, and corrupt. The applicant's spouse also states that he believes adoption is not possible in Romania with its poverty and starvation. A letter from a physician for the applicant states that she had surgery to remove large tubes and pelvic adhesions, so now her only means of conceiving is through vitro fertilization that would require the use of third party reproduction, meaning donor eggs. The letter states that in the United States such procedures are regulated by the FDA to ensure safety, but they are not regulated in Romania, and it would be very difficult to undergo such a procedure there.

Country information submitted to the record shows that Romania has a high rate of poverty with a weak economy and widespread corruption and has a poor health care system largely due to corruption and qualified medical people leaving the country. The U.S. Department of State indicates that medical care in Romania is generally not up to Western standards and basic medical supplies are limited, especially outside major cities. It also notes that the country is going through a financial crisis with resulting economic austerity measures. *See* U.S. Department of State, Bureau of Consular Affairs, April 16, 2014.

The record establishes that the applicant's spouse was born in the United States and has no ties to Romania. By relocating he would have to leave his family, most notably parents and siblings, and his community, and be concerned about his financial well-being in light of the poor economy and lack of employment opportunities in Romania. Further, the record shows that the applicant and her spouse desire to have children but are unable to conceive without delicate medical procedures, which may be unsafe or unavailable in Romania given medical standards there. It has thus been established

that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility. Considered in the aggregate, the applicant has established that her spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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). . . .

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the hardships the applicant's U.S. citizen spouse would face if the applicant is not granted this waiver, the applicant's support from her spouse's family and colleagues in the United States, her employment and payment of taxes, her apparent lack of a criminal record, and the passage of more than 10 years since her immigration violation. The unfavorable factor in this matter is the applicant's entry to United States by misrepresentation.

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. 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.