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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: OCT 29 2014 Office: GUANGZHOU 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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Guangzhou, China, and after reviewing the appeal the Administrative Appeals Office (AAO) remanded it to the Field Office Director. The waiver application was denied again and certified to the AAO for review. The waiver application remains denied and the appeal is dismissed.

The applicant is a native and citizen of China who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States by fraud or willful misrepresentation of a material fact, and under section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), for knowingly aiding her children to enter the United States in violation of the law. The applicant is the beneficiary of a Form I-130, Petition for Alien Relative (Form I-130), that her U.S. citizen son filed on her behalf. She seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), and section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11).

The Field Office Director found that the applicant did not establish she has a qualifying relative, because the Form I-601, Applicant for Waiver of Grounds of Inadmissibility (Form I-601), listed only her children as relatives through whom she claims eligibility and that she did not qualify for a waiver under section 212(d)(11) of the Act. He denied the Form I-601 accordingly. *Decision of the Field Office Director*, dated May 14, 2012.

On appeal, we found evidence in the record showing that the applicant earlier had entered into a sham marriage with a U.S. citizen for the purpose of evading U.S. immigration laws and obtaining an immigration benefit; the first Form I-130 filed on behalf of the applicant was revoked for that reason. Because the record shows the California Service Center Director revoked the petition after finding the applicant's marriage invalid for immigration purposes, the applicant is permanently barred from approval of any petitions to immigrate to the United States. Moreover, we concluded that since the viability of Form I-601 depends on an approved Form I-130, no purpose would be served in addressing the merits of the Form I-601 appeal. *AAO Decision*, dated January 31, 2013. We remanded the matter to the Field Office Director to initiate revocation proceedings of the current Form I-130, with instructions to certify the application back to us if the current Form I-130 was not revoked.

The Field Office Director subsequently certified the decision to us on April 28, 2014, because he could not revoke the Form I-130, as the original Form I-130 could not be located. He denied the Form I-601 a second time, as the applicant again did not establish that she has a qualifying relative. *Second Decision of the Field Office Director*, dated April 28, 2014.

The record includes, but is not limited to, the applicant's spouse's statement, medical records, marriage and divorce records, and immigration records. 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, 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 Secretary of the Department of Homeland Security (Secretary)] may, in the discretion of the [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 [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 married a U.S. citizen, [redacted] who filed a Form I-130 on her behalf in 1993. After the U.S. citizen petitioner failed to respond to a notice of intent to revoke based on the lack of evidence of a bona fide relationship with the applicant, the Form I-130 was revoked on December 8, 2010. The applicant in December 14, 2011, admitted under oath to a U.S. consular officer that she had entered into a false marriage with [redacted] The record reflects that she married a U.S. citizen solely to immigrate to the United States and misrepresented her marriage as bona fide. She is therefore inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for seeking to procure an immigration benefit under the Act through willful misrepresentation of a material fact. The applicant does not contest this ground of inadmissibility.

Section 212(a)(6)(E) of the Act provides, in pertinent part, that:

> (i) In general-Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.
>
> ...
>
> (iii) Waiver authorized-For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d)(11) of the Act provides, in pertinent part, that:

> The [Secretary] may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of

> subsection (a)(6)(E) in the case of . . . an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

The record reflects that the applicant listed her three children on her Optional Form 230, Application for Immigrant Visa and Alien Registration (Form 230), which she filed in 1994. The record includes evidence showing the applicant admitted the underlying Form I-130 for this visa application was based on a false marriage. Because the applicant tried to assist her children to enter the United States unlawfully as a result of this false marriage, she is inadmissible under section 212(a)(6)(E) of the Act. The applicant does not contest this ground of inadmissibility.

We will first address the waiver application under section 212(i) of the Act. The applicant submitted translated "notarial certificates" with her first Form I-130 showing she married [redacted] on September [redacted] she had married [redacted] on August [redacted] and divorced him on October [redacted] The applicant submitted a notarial certificate with her second Form I-130 claiming that she married [redacted] on March [redacted] The applicant submitted a different notarial certificate with her Form I-290B, Notice of Appeal or Motion, claiming that she married [redacted] on March [redacted]; no evidence of divorce accompanied these forms. She informed a U.S. consular officer on December 14, 2011, that she married [redacted] and never divorced him. On her current Forms I-130 and 230, moreover, she lists him, using the spelling [redacted] as her spouse. The applicant currently asserts that [redacted] with this name appearing in counsel's brief and the U.S. passport page accompanying his affidavit, is her U.S. citizen spouse. She did not list him or any spouse on her Form I-601; on this form she states that [redacted] left her family in 1981, went to [redacted] as a stowaway, and never contacted her again. On appeal the applicant submits an affidavit from [redacted] who claims to be her U.S. citizen husband.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Based on the record, we find that the applicant has not established that she has a qualifying relative under section 212(i) of the Act.

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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse. If extreme

hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services 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*, 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.

Had the applicant established that she is married to the U.S. citizen , the hardship he would experience if he relocates to China, based on the evidence submitted, would not be extreme. The individual claiming to be her spouse states that his two U.S. citizen children and one lawful permanent resident child live in the United States; he suffers from asthma, hypertension, depression, and hyperlipidemia; he sees a psychiatrist; and he must take several medications. Counsel states that this individual has resided in the United States since 1997; his health "will prevent him from seeking employment" in China; the applicant cannot care for him alone in China; and he receives medical and psychological care from several doctors in the United States of a type that may not be available in China. The record includes medical documents corroborating claims about his conditions, medications, and psychiatric treatment. The record does not include evidence addressing the availability of suitable medical treatment in China. Though the record reflects that this individual would experience some difficulty if he relocated to China, there is insufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that he would suffer extreme hardship upon relocation to China.

To address hardship this individual would experience if he remains in the United States without the applicant, counsel states that he suffers from depression due to separation from the applicant and is under the care of a psychiatrist. The man now presented as the applicant's spouse states that he is unable to look after himself on a daily basis and had to move in with his daughter as a result; his daughter and spouse work full-time and they also have to care for three children; his sons cannot care for him as one has a family with young children and the other is a truck driver; the applicant would care for him, take him to medical appointments and remind him to take his medications; he misses her love and companionship; his health will decline as there is no one to care for him on a daily basis; and his mental health will improve upon being reunited. The record reflects that this individual would experience difficulty if he remained in the United States. However, we find that there is insufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that he would suffer extreme hardship upon remaining in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. In the event that extreme hardship had established, we would have dismissed the appeal as a matter of discretion.

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.

We note that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

> We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra,* is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez 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 (citation omitted).

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 section 212(h)(1)(B) 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 include the applicant's family ties to the United States and her lack of a criminal conviction. The unfavorable factors include the applicant's fraudulent marriage that resulted in her first Form I-130 being revoked and her attempts to assist her children to enter the United States unlawfully. We find the favorable factors in the present case do not outweigh the adverse factors, such that a favorable exercise of discretion is not warranted.

As we have found that the applicant is ineligible for a section 212(i) waiver, we find that no purpose would be served in addressing her waiver application under section 212(d)(11) of the Act.

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 not been met. Accordingly, the application will remain denied.

ORDER: The application remains denied.