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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: JUL 17 2014 OFFICE: NEBRASKA SERVICE CENTER File: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 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 Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects the applicant is a native and citizen of Cote d'Ivoire 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 willfully misrepresenting material facts to procure benefits under the Act. The record reflects the applicant also was found to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within 10 years of his last departure from the United States. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v), in order to reside in the United States with his wife.

The Director determined the applicant had not established extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Decision of the Director*, dated September 23, 2013.

On appeal, counsel asserts the denial of the waiver application was a manifest abuse of discretion and contrary to law; U.S. Citizenship and Immigration Services (USCIS) misconstrued the record concerning the applicant's spouse's employment; and USCIS unfairly placed extensive weight on the adverse factors in the record, when the overwhelming evidence in the record proves the applicant's spouse continues to suffer extreme financial, mental, and psychological hardship in the applicant's absence. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), dated October 22, 2013. Counsel also states that he will submit a brief in support of the applicant's appeal. The record does not include a brief dated after October 2013, when the applicant filed his Form I-290B; the record therefore, is considered complete as of the date of this decision.

The record includes, but is not limited to: affidavits by the applicant's spouse, psychological evaluations of the applicant's spouse, letters of support, documents establishing identity and relationships, financial documents, photographs, and documents about conditions in Cote d'Ivoire and France. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6) of the Act states, in pertinent part:

> (C) Misrepresentation.-
>
> > (i) 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.
> >
> > ...

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act states, in pertinent part:

(1) The Attorney General [now Secretary 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 Director found the applicant inadmissible for having attempted to procure admission to the United States under the Visa Waiver program on March 22, 2001, by presenting to U.S. inspectors a French passport that did not belong to him. The applicant was returned to France the following day. On appeal, the applicant does not contest this finding of inadmissibility. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(a)(9) of the Act states, in pertinent part:

(B) Aliens unlawfully present.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

...

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

...

(v) Waiver.-The [Secretary] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

The record reflects the applicant entered the United States without inspection[1] around August 2001 and remained until July 25, 2011, when he departed pursuant to the terms of a voluntary-departure order issued by the immigration judge on May 3, 2011. The record also reflects the applicant has remained outside the United States to date. The applicant accrued unlawful presence from August 2001 until he filed his first application for adjustment of status in July 2008, a period in excess of one year. Accordingly, the applicant also is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding of inadmissibility.

Sections 212(i) and 212(a)(9)(B)(v) of the Act provide that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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).

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[1] The applicant initially claimed he was lawfully admitted with his French passport under the Visa Waiver program but despite counsel's efforts, he was unable to prove his admission after losing his passport.

However, though hardships may not be extreme when considered abstractly or individually, the BIA 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.*, *In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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.

The applicant's spouse contends that she has suffered financial, emotional, and psychological hardship in the applicant's absence as: the applicant was their family's primary breadwinner as a restaurant manager, but he has been unemployed since he returned to Cote d'Ivoire; the applicant's financial support and encouragement helped her to rise in her profession involving lighting design; she is "working herself to death" to make sure she has a place to live; she has accumulated $16,000 in credit-card debt; she has been late on her cable, electric, and credit-card bills, and her life insurance has been cancelled due to nonpayment; she is regularly harassed by several collection agencies; she has depleted her life savings; she no longer maintains health insurance because she cannot afford it without the applicant's help; she and the applicant lived in a safe neighborhood, and now she lives in an area where she fears for her personal safety and wakes up to find insects crawling on her; she cannot sleep, as police cars and ambulances go through her neighborhood regularly and as a result, she is late to work almost every day; she hardly visits with friends or family, as she is required to work as much as possible; she feels isolated, depressed, worried and sometimes stays in bed rather than leave her apartment; she has resorted to drinking alcohol to alleviate her stress; and she does not have family support in the area.

To corroborate the claims of hardship to the applicant and his spouse, the record includes a letter from the applicant's mother-in-law, who states: her daughter and the applicant are miserable and lost without one another; they do not want to be apart and are greatly distressed; her daughter was pleasant and patient but now is more easily annoyed or angered; the applicant and her daughter planned to buy a house and raise a family, and they would contribute to society as productive

citizens; her daughter is struggling without the applicant's necessary assistance, as she has moved to a less safe area and is working late hours; the applicant has made the United States his home, where he has a wife, family, and friends longing for his return; and he was a skilled professional in the United States, but now he is relatively unproductive in Cote d'Ivoire. The record also includes a letter from the applicant's father-in-law, who states that separation from the applicant has devastated his daughter's life as: she is now withdrawn and her lifestyle has been affected; she used to communicate with and visit her family several times each year, but communication has been sparse or incoherent because she is working sleeplessly, trying to exist; and the loss of the applicant's income has affected her debt and creditworthiness. The record further includes a letter from the applicant's spouse's friend, indicating that life has been difficult for the applicant's spouse in the applicant's absence as: she has moved to a smaller, dirty apartment building because it is all she can afford; her friends have recommended that she talk to someone about her fears, but she is unable to afford to do so; she has not been taking care of herself; she is drinking more to forget about her situation; she used to be vibrant and cheerful but is now withdrawn; and employment opportunities are more limited so she has taken on work in dangerous environments, including sleeping in her car between assignments.

Additionally, the record includes psychological evaluations of the applicant's spouse dated May 3, 2011; November 6, 2012; and August 8, 2013 that indicate the applicant's spouse was diagnosed with major depressive disorder and suffers from a high level of stress, post-traumatic stress disorder, insomnia, low energy, poor concentration, weight gain, and low mood.

To corroborate the applicant's spouse's claims of financial hardship, the applicant submits a year-long lease agreement indicating a monthly rent of $1,112 commencing on February 7, 2012; earnings statements from July 2013; billing statements, including a phone bill with a past due amount of $132.22; and the applicant's tax returns, indicating that his annual salary prior to his departure to Cote d'Ivoire was about $51,400. The record also includes a report concerning employment rates in Cote d'Ivoire, indicating up to 5 million individuals are unemployed, and the unemployment rate for individuals between 15 and 35 years of age is at 60 percent.

The record is sufficient to establish the applicant served as the primary breadwinner for his household prior to departing for Cote d'Ivoire and that he played an essential role in assisting his spouse with her financial and mental wellbeing. Moreover, the applicant's spouse, her friends and family have described in sufficient detail their concerns regarding the hardship the applicant's spouse is experiencing in the applicant's absence. When evidence of this hardship is considered in the aggregate, the record establishes the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.[2]

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[2] In analyzing the applicant's spouse's financial hardship, the Director's decision states that the evidence "failed to establish that [she] is suffering an extreme financial hardship above and beyond what, unfortunately, is normally encountered as the result of the removal of a loved one." As previously noted, though hardships may not be extreme when considered abstractly or individually, the BIA 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-*, *supra*. Nevertheless, we find the Director's analysis of financial hardship to the applicant's spouse to be harmless error.

In his previous decision, the Director determined the applicant's spouse would experience extreme hardship upon relocation to Cote d'Ivoire. The record demonstrates the applicant's spouse maintains strong familial and social ties to the United States, and it contains evidence of challenging social, economic, and political conditions in Cote d'Ivoire for consideration along with the normal hardships associated with relocation. The situation in Cote d'Ivoire does not appear to have changed since the Director's previous decision. Accordingly, the record continues to reflect the cumulative effect of the hardship the applicant's spouse would experience upon relocation due to the applicant's inadmissibility rises to the level of extreme.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, *supra* at 301. 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 stated 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.*

The favorable factors in this case include extreme hardship to the applicant's U.S. citizen spouse, letters of support, the filing of income taxes, and the absence of a criminal record. The unfavorable factors include the applicant's misrepresentation of his identity as well as periods of unauthorized presence and employment. 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.

The burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.