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**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

**U.S. Citizenship and Immigration Services**

[redacted]

H2

Date: NOV 04 2011 Office: NEW YORK, NY FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), and section 212(i) of the Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York City. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Canada who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), 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(h) of the Act, 8 U.S.C. § 1182(h), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Director*, dated February 17, 2009.

On appeal, counsel contends the district director's "determination of fraud is erroneous since there is no material fraud in any issue involved." In addition, counsel contends the district director failed to properly consider all of the evidence of hardship and submits additional evidence of hardship.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, , indicating they were married on September 17, 2005; two affidavits and a letter from the applicant; a letter from ; a psychosocial report; a letter from physician; a letter from employer; letters of support; copies of tax returns and other financial documents; copies of photographs of the applicant and her family; copies of court documents addressing the applicant's convictions; and an approved Petition for Alien Relative (Form I-130).

Section 212(a)(2)(A) of the Act states in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

> (h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

> (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that --
>
> > (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
> >
> > (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
> >
> > (iii) the alien has been rehabilitated.
>
> (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

In this case, the record shows, and the applicant concedes, that between September of 1984 and June of 1985, when she was sixteen years old, she was arrested four times and subsequently convicted each time of theft over $200. *Affidavit of* dated February 2, 2009. Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), for having committed a crime involving moral turpitude.[1]

The director evaluated the applicant's waiver application for extreme hardship to a qualifying relative under section 212(h)(1)(B) of the Act. However, because more than fifteen years have now passed, the applicant is eligible for consideration of a waiver under section 212(h)(1)(A) of the Act. Nonetheless, as explained below, the AAO finds that the applicant is also 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 and has not demonstrated eligibility for a waiver under section 212(i) of the Act. Therefore, the AAO will not determine whether the applicant is eligible for a waiver under section section 212(h)(1)(A) of the Act.

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

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[1] The AAO notes that although section 212(a)(2)(A)(ii)(I) contains an exception for an applicant who committed only one crime if she was under eighteen years old, in this case, the applicant was convicted four times. Therefore, the exception does not apply.

> documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) provides:

> (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.

The record shows that on the applicant's first Form I-485, she stated that the date of her last arrival to the United States was on March 17, 1989. The applicant subsequently amended this date to the year 1991. *Application to Register Permanent Residence or Adjust Status (Form I-485)*, dated April 17, 2006. The record further shows that on the applicant's second Form I-485, she again stated that the date of her last arrival to the United States was on March 17, 1989. The applicant subsequently amended this date to July 1992. *Application to Register Permanent Residence or Adjust Status (Form I-485)*, dated February 29, 2009. In addition, the record shows that the applicant was refused admission to the United States on November 14, 1995. The record also shows that the applicant married her husband, Mr. Yario, on September 17, 2005, in the United States.

The district director found that the applicant failed to disclose the correct information regarding the date of her last arrival into the United States on multiple occasions. The district director noted in her decision that the applicant stated during her adjustment of status interview that she had been denied admission to the United States on one occasion in July 1992. The district director found that the non-disclosure of such important information is a misrepresentation of a material fact in order to obtain an immigration benefit.

The applicant submits an affidavit contending she never intended to commit fraud upon the United States government. According to the applicant, her first entry into the United States was in 1989 and that her last entry was in 1995. She contends that "[t]he person who prepared [her] papers misunderstood and it is possible that [she] may have misunderstood the question . . . ." The applicant asserts that "November 4, 1995 . . . was [her] last entry into the United States." *Affidavit of* dated March 16, 2009.

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).

In this case, the applicant's contention that she may have misunderstood the question, and that the person who prepared her papers misunderstood the questions, is unpersuasive. The applicant has not met her burden of showing she did not intentionally misrepresent the dates of her entries and exits into and out of the United States. The record shows that the applicant was refused admission to the United States on November 14, 1995. Therefore, the date of the applicant's last arrival to the United States must have taken place sometime after November 14, 1995.

Counsel's contention that "there is no material fraud in any issue involved" is unpersuasive. The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (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.

*See also Kungys v. United States*, 485 US 759 (1988); *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). In this case, the applicant has yet to provide a complete and accurate accounting of the dates she has entered and exited the United States. For instance, in her first Form I-485, it is unclear why the applicant changed the date of her last arrival to the United States to the year 1991. *Application to Register Permanent Residence or Adjust Status (Form I-485)*, dated April 17, 2006. The applicant has not addressed how she purportedly entered the United States in 1991 and there is no indication in the record that she was lawfully admitted at that time. Similarly, in her second Form I-485, it is unclear why the applicant changed the date of her last arrival to the United States to July 1992. *Application to Register Permanent Residence or Adjust Status (Form I-485)*, dated February 29, 2009. Again, it is unclear whether the applicant was lawfully admitted to the United States in July of 1992. By failing to provide accurate and completes dates of entries into and exits out of the United States, USCIS cannot properly determine whether an applicant may be excluded from the United States for reasons such as unlawful presence, entering without inspection, or overstaying a visa. Therefore, because the applicant failed to properly account for her stays in the United States, a line of inquiry which is relevant to the applicant's admission to the United States was shut off. Under these circumstances, the AAO finds 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, , states that he and his wife are planning to have a family and that his extended family in the United States would assist with childcare and emotional support. In addition, states he is a founder and partner in a technology consulting firm that employs over 160 people in the United States. According to , relocating to Canada is not an option because he cannot have a family, maintain gainful employment, or realize his company investment if he does not remain in the United States. He contends it is not a viable personal or business option to move. *Letter from* , undated.

A psychosocial report in the record states that cares for his ailing mother who suffers from a rare autoimmune disease called Alpha-1 Trypsin. According to the social worker, s mother recently had a double lung transplant and takes many medications. The social worker contends that s mother's "life remains at acute risk." The psychosocial report includes a personal statement from mother which states that the applicant is an integral part of the family and helps her as a caregiver.

The psychosocial report also includes a personal statement from s father which states that the applicant is considered a member of the immediate family. A personal statement from sister states that although she has two brothers and a sister, they all live in different states, leaving her to be the sole local caretaker of their mother who had a double lung transplant in 2005. The psychosocial report states that sister can always count on the applicant even though she is thousands of miles away. The psychosocial report also contains personal statements from two of other sisters and his brother, all of whom contend that the applicant fits in well with their close knit family.

In addition, according to the social worker, manages a large company and hundreds of people rely on his presence for their jobs and livelihoods. The applicant reportedly manages most of business needs, including all appointments and schedule. The psychosocial report includes a personal statement from which states that he has built a $55 million global company that has offices throughout the United States as well as in London, Singapore, South Africa, India, and Australia. reportedly stated that if he departed his New York office, "[i]t would impact 65% of the firm's business directly and another 35% of the company's business indirectly." The psychosocial report states that contended that the company's foundation and vision was his idea, and that he is still the visionary and driving force behind the firm's expansion. and his partner have purportedly personally invested millions of their own dollars to develop and build the company and manages the eastern half of the United States, Europe, and Africa. purportedly stated that it would be very difficult for him to run his business from Canada, particularly considering that 90% of the business is based in the United States, and that leaving New York would

have a detrimental impact on the business. Furthermore, reportedly stated that he and his wife also own and manage an apartment building in Illinois. Moreover, contends that his asthma is triggered by cold air, stress, and changing weather, and that moving to Canada to be with his wife would add stress, complicating his asthma and high blood pressure.

Furthermore, the social worker contends suffers from several medical, physical, and psychiatric issues and that his wife is essential in assisting him with a healthy diet, medications, stress reduction, and doctor's appointments. According to the social worker, suffers from hypertension for which he takes a prescription medication, asthma for which he has been prescribed five medications, panic attacks, generalized anxiety, and dysthymia/depression. The social worker contends is a fragile and vulnerable man who has been anxious and depressed, and that without his wife, he would be totally overwhelmed and unable to cope. The social worker diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood, Major Depressive Disorder, Generalized Anxiety Disorder, and Panic Attacks. The social worker contends that the emotional bond between the applicant and cannot be overstated, that they deeply love each other, and that depends on his wife for almost all of his psychological needs. reported having a pervasive and excessive need to be taken care of and that he has difficulty making everyday decisions without an excessive amount of advice from his wife. *Psychosocial Report*, dated January 23, 2009.

A letter from physician states that suffers from severe persistent asthma and year-round allergies, has been hospitalized for severe asthma, has required cardiopulmonary resuscitation due to a life-threatening asthma attack, and must take multiple medications on a daily basis to keep his symptoms in control. The physician states that is extremely sensitive to cold weather and suffers from his asthma more in the winter. The physician recommended against moving to a colder environment such as Canada as this type of move would make his asthma, which is fairly under control in New York, worse. *Letter from* , dated March 12, 2009.

The AAO recognizes that will suffer hardship as a result of the denial of the applicant's waiver application and is sympathetic to the couple's circumstances. However, if decides to remain in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding the psychosocial report, the AAO notes that the social worker makes numerous statements in the psychosocial report that have no corroborating evidence in the record. For instance, a significant portion of the report consists of unsigned personal statements from and numerous family members that are dated in March 2009. However, the record does not contain copies of these personal statements. Similarly, the psychosocial report contends 's mother has a rare auto-immune disease called alpha-1 antitrypsin deficiency and that her life remains at acute risk. However, the record does not contain any documentation, such as a signed letter from either mother or her physician, to corroborate this claim and the social worker does not claim to have conducted a medical exam on her, nor does he contend he is qualified to diagnose her medical conditions. In addition, the social worker contends has numerous medical problems including hypertension; however, the letter from physician makes no mention of hypertension. Furthermore, although the social worker states that the report was based on an interview conducted "with the family" on January

20, 2009, it is unclear precisely who the social worker interviewed. The fact that the psychosocial report was based on a single interview and makes assertions that are unsupported by other documentation in the record diminishes the report's value to a determination of extreme hardship. In any event, the psychosocial report does not show that hardship is unique or atypical compared to others in similar circumstances. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

Regarding the letter from physician, there is no contention that requires any assistance for his asthma or allergies and no suggestion he is unable or unwilling to take his medications to control his symptoms.

Furthermore, the record does not show that would suffer extreme hardship if he were to relocate to Canada to avoid the hardship of separation. Although the record shows that he has severe asthma and allergies and his physician recommends not moving to a colder climate, the letter from s physician, in and of itself, fails to give sufficient details to show the extent of the hardship. The AAO respects and values the input of s physician. However, the letter from his physician does not give any details regarding his hospitalization that required cardiopulmonary resuscitation, such as the date or location of the attack, information relevant to sensitivity to climate. Similarly, the letter from his physician fails to describe the frequency of his asthma attacks. Notably, the only signed letter from in the record discusses his unwillingness to move to Canada due to personal and professional reasons, but makes no mention whatsoever about his asthma or allergies.

To the extent makes a financial hardship claim and contends that he cannot run his company if he relocates to Canada, the record shows that earns a base salary of $150,000 annually, not including bonuses. *Letter from* , dated January 23, 2009; *see also 2007 U.S. Individual Income Tax Return (Form 1040)* (indicating earned $134,472 in wages). Furthermore, submitted a Form I-864, affirming he would financially support the applicant based on his salary alone of $203,193, and indicating assets of $500,000. *Affidavit of Support under Section 213A of the Act (Form I-864)*, dated April 17, 2006; *see also Chase Deposit Account Balance Summary*, dated January 26, 2009 (indicating a savings account balance of $40,969). The AAO notes that company is already an international company. The AAO further notes that there is nothing in the record, such as a letter from s partner, corroborating his claim that his presence in New York is critical to the continuing operation of the company. Although may experience some financial hardship and his business may suffer some negative consequences if he moved to Canada, the record does not contain sufficient evidence to show that the level of hardship is beyond that experienced by others. In sum, the record does not show that s relocation to Canada to avoid the hardship of separation from his wife would be any more difficult than would normally be expected under the circumstances. Considering all of the evidence in the aggregate, the record does not show that hardship would be extreme or that his situation is unique or atypical compared to others in similar circumstances. *See Perez v. INS, supra.*

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.