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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H5

FILE: [redacted] Office: PHILADELHPIA Date: APR 01 2010

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The matter will be returned to the acting district director for continued processing.

The record reflects that the applicant, a native and citizen of Cambodia, married , a U.S. citizen, on November 14, 1998. Subsequently, in January 1999, filed a Form I-130, Petition for Alien Relative (Form I-130) on behalf of the applicant, and concurrently, the applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485). The record indicates that the applicant's previous marriage, to was not disclosed on the Form I-130, on any documentation pertaining to the applicant's adjustment of status application or at the I-485 interview in April 1999.[1] In addition, the record establishes that the applicant did not disclose her divorce from when she applied for a nonimmigrant visa at the American Embassy in in October 1996. *See Optional Form 156,* dated October 7, 1996. Finally, the applicant failed to disclose the existence of four biological children on the Form I-485 and at the I-485 interview. Based on the applicant's failure to disclose her previous marriage and subsequent divorce, and the existence of biological children, on numerous immigration documents, it was determined that the applicant was inadmissible 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 fraud and/or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse.

The acting district director concluded that extreme hardship to a qualifying relative had not been established and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Acting District Director,* dated July 11, 2006.

In support of the appeal, counsel for the applicant submits a brief and supporting documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

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[1] A Divorce Agreement has been provided confirming that the applicant and were divorced on May 15, 1996. *See Divorce Agreement, Kingdom of Cambodia National Religion King,* dated May 15, 1996.

In a letter provided by , he asserts that the failure to disclose the applicant's previous marriage and divorce on immigration forms and during the adjustment of status interview was because "this was a mistake when we were filling out the applications. We went to the Lutheran Children and Family Services for assistance in preparing the applications. When she [the applicant] was filing them out with Lutheran, she wasn't asked if she was married before so her first marriage wasn't listed on the papers. This was just a mistake because she has been previously divorced in Cambodia before she came to the United States. Also, on the recent request, it says that my wife [the applicant] made a misrepresentation to the U.S. Embassy when applying for a visa to come to the United States. I don't think my wife was trying to be dishonest or anything, but maybe she made a mistake filling out the paperwork because she wasn't sure what the right answer should be.... All the time I have known my wife she has been honest and good and never lied to anybody, I don't think she would try to intentionally lie to the U.S. government...." *Statement in Support from* , dated December 22, 2003.

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.

The Department of State's Foreign Affairs Manual [FAM] further provides, in pertinent part:

> Materiality does not rest on the simple moral premise that an alien has lied, but must be measured pragmatically in the context of the individual case as to whether the misrepresentation was of direct and objective significance to the proper resolution of the alien's application for a visa....
>
> "A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either:
>
> (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 have resulted in a proper determination that he be excluded." (Matter of S- and B-C, 9 I&N 436, at 447.)

DOS Foreign Affairs Manual, § *40.63 N. 6.1.* Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis to be persuasive.

A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I. & N. Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I. & N. Dec. 409 (BIA 1962; AG 1964) and *Matter of S- and B-C-*, 9 I. & N. Dec. 436 (BIA 1950; AG 1961). If the applicant had disclosed her prior marriage, and the existence of four biological children, on her Form I-130 and/or I-485, she would still have been eligible for the benefit as she had divorced her prior spouse before marrying [redacted]. As such, with respect to these misrepresenations, the AAO concludes that the applicant's failure to disclose this information is not material.

Nevertheless, with respect to the applicant's failure to disclose her divorce when applying for a nonimmigrant visa, the AAO finds that the applicant is inadmissible for fraud and/or willful misrepresentation, as further discussed below.

To establish eligibility for a non-immigrant B1/B2 visa, section 101(a)(15) of the Act states, in pertinent part:

> (B) an alien...having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleaure.

The FAM further provides:

> The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.

DOS Foreign Affairs Manual, § 41.31 N. 3.4.

By stating that she was married, when in fact she was divorced, when applying for a nonimmigrant visa in October 1996, the applicant led the American Embassy in Phnom Penh to believe that she had close family ties, namely, a husband, in her home country. By omitting the fact that she was divorced, she cut off a line of inquiry which was relevant to the applicant's request for a visitor visa. As such, the AAO concurs with the acting district director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud and/or willful misrepresentation with respect to her nonimmigrant visa application at the American Embassy in Phnom Penh in October 1996.[2]

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible..." and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA held in *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning

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[2] Regarding counsel's claim that the applicant did not understand how to respond to the question regarding her marital status, the AAO notes that the applicant clearly marked the box for Married and listed her ex-husband's name on question 18 of the Optional Form 156. Moreover, notations on the Optional Form 156, next to the applicant's ex-spouse's name, note that he was employed as a medical doctor at a government hospital. These handwritten notes indicate that the applicant was asked questions about her ex-spouse at the nonimmigrant interview, to which she responded without disclosing that she was divorced.

> hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In the present case, the applicant's spouse, a U.S. citizen, is the only qualifying relative and hardship to the applicant cannot be considered, except as it may affect the applicant's spouse.

Extreme hardship must first be established in the event the applicant's spouse remains in the United States while the applicant relocates abroad due to her inadmissibility. With respect to this criteria, counsel notes that the applicant's spouse is disabled and is dependent on his spouse's income. In addition, counsel asserts and documents that the applicant's spouse has been diagnosed with schizophrenia, paranoid type. *Brief in Support of Appeal,* dated September 1, 2006.

In support, a letter has been provided from the applicant's spouse's treating physician, , confirming that the applicant's spouse suffers from schizophrenia, a chronic condition, and is taking numerous medications to manage his condition. *Letter from* , dated August 17, 2006. In addition, evidence of the applicant's spouse's receipt of supplemental security income due to disability has been submitted. *Social Security Administration Supplemental Security Income,* dated July 26, 2006. Moreover, a letter has been provided from Manager, Staff Management, confirming the applicant's gainful employment as a Mail Laborer since November 2005. *Letter from* dated August 3, 2006.

Were the applicant unable to reside in the United States, the applicant's U.S. citizen spouse would have care for himself emotionally and financially, while suffering from a chronic mental illness and disability, without the complete support of the applicant. The AAO thus concludes that the applicant's U.S. citizen spouse would suffer extreme hardship were the applicant to reside abroad while he remains in the United States. The applicant's spouse needs his wife's support on a day to day basis.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant's U.S. citizen spouse asserts that he would suffer extreme hardship were he to relocate to Cambodia. As he states,

> I came to the United States on or about 1980 as a refugee.... My family came to the United States because of the war in Cambodia and people were being killed by Cambodian soldiers. Because of the intense civil strife many thousands of Cambodians fled the country, some, like myself and my family, were fortunate enough to come to the United States. Many

> others, who were less fortunate, were killed. I have not returned to Cambodia since my family and I fled the country many decades ago. I now have no family remaining in Cambodia....
>
> [T]he conditions in Cambodia are still very bad. My wife [the applicant] has been in the U.S. for over six years and I have been in the U.S, for over twenty years. We would not be able to start over in Cambodia, where conditions are very harsh and there are no jobs available for us.
>
> I also have a medical problem.... I require medication everyday for treatment. I could not receive the same treatment in Cambodia.

Statement in Support from dated December 22, 2003.

The AAO notes that medical facilities and services in Cambodia do not meet international standards. *Country Specific Information-Cambodia, U.S. Department of State,* dated February 16, 2010. In addition, counsel has provided documentation regarding the problematic country conditions in Cambodia, including economic instability[3] and human rights violations.[4] *Supra* at 9-10.

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[3] As noted by the U.S. Department of State,

> In spite of recent progress, the Cambodian economy continues to suffer from the legacy of decades of war and internal strife. Per capita income and education levels are lower than in most neighboring countries. Infrastructure remains inadequate, although road networks are improving rapidly. Most rural households depend on agriculture and its related subsectors. Corruption and lack of legal protections for investors continue to hamper economic opportunity and competitiveness. The economy also has a poor track record in creating jobs in the formal sector, and the challenge will only become more daunting in the future since 50% of the population is under 20 years of age and large numbers of job seekers will begin to enter the work force over the next 10 years.

Background Notes-Cambodia, U.S. Department of State, dated January 2010.

[4] With respect to human right in Cambodia, the U.S. Department of State asserts as follows:

> The government's human rights record remained poor. Security forces committed extrajudicial killings and acted with impunity. Detainees were abused, often to extract confessions, and prison conditions were harsh. Human rights monitors reported arbitrary arrests and prolonged pretrial detention, underscoring a weak judiciary and denial of the right to a fair trial. Land disputes and forced evictions were a problem. The government restricted freedom of speech and the press through defamation and disinformation lawsuits and at times interfered with freedom of assembly. Corruption was endemic. Domestic violence and child abuse occurred, education of children was inadequate, and

Based on the applicant's spouse's traumatic experiences while in Cambodia and the emotional and psychological ramifications of said experiences, in light of his chronic mental health diagnosis, human rights issues and a substandard economy, the AAO finds that the applicant's U.S. citizen spouse would experience extreme hardship were he to relocate to Cambodia to reside with the applicant.

Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-,* 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *Id.* at 300. (Citations omitted).

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trafficking in women and children persisted. **The government offered little assistance to persons with disabilities.** Antiunion activity by employers and weak enforcement of labor laws continued, and child labor in the informal sector remained a problem.

2009 Human Rights Report: Cambodia, U.S. Department of State, dated March 11, 2010.

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse would face if the applicant were to reside in Cambodia, regardless of whether he accompanied the applicant or remained in the United States, the applicant's history of gainful employment, community ties, payment of taxes and the passage of more than thirteen years since the applicant's immigration violation which led to the acting district director's finding of inadmissibility. The unfavorable factor in this matter is the applicant's fraud and/or willful misrepresentation.

The immigration violation committed by the applicant was serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved. The acting district director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.