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



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

115

FILE: [REDACTED]

Office: [REDACTED]

Date:

AUG 24 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:

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.

Thank you,

[REDACTED]
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Jose, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The matter will be returned to the field office director for continued processing.

The record reflects that the applicant, a native and citizen of Iran, married [REDACTED] in 1992. They divorced in September 2002. The applicant subsequently married [REDACTED] a U.S. citizen, in June 2006. *License and Certificate of Marriage*, dated June 13, 2006. In June 2006, [REDACTED] 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 establishes that the applicant did not disclose her divorce from [REDACTED] when she applied for a nonimmigrant visa at the American Embassy in Switzerland in September 2005, as further discussed in detail below. *See Form DS-156*, dated September 23, 2005. Based on the applicant's failure to disclose her divorce from [REDACTED] at the time of her nonimmigrant visa processing in 2005, 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 having procured a nonimmigrant visa and subsequent admission to the United States by 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 field office director concluded that extreme hardship to a qualifying relative had not been established and denied the Application for Waiver of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated March 5, 2010.

In support of the appeal, counsel for the applicant submits a brief, dated April 19, 2010, and referenced exhibits. In addition, supplemental evidence in support of the appeal and a request to expedite the appellate review were received by the AAO in May and June of 2010 respectively. 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 the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), waive the application of clause (i) of subsection (a)(6)(C) in the case of an 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 Attorney General (Secretary) that the refusal of admission

to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

With respect to the finding that the applicant is inadmissible under section 212(a)(6)(C) of the Act because she failed to disclose her divorce when applying for a nonimmigrant visa in 2005, the applicant contends that she did not know the English language and asked somebody else to complete the DS-156 on her behalf. [REDACTED] dated May 24, 2010.

The Department of State Foreign Affairs Manual states, in pertinent part, that in order to find an alien ineligible under section 212(a)(6)(C)(i) of the Act, it must be determined that:

- (1) There has been a misrepresentation made by the applicant;
- (2) The misrepresentation was willfully made; and
- (3) The fact misrepresented is material; or
- (4) The alien uses fraud to procure a visa or other documentation to receive a benefit....

DOS Foreign Affairs Manual, § 40.63 N2. 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).

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 pleasure.

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.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of*

Martinez, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The applicant clearly marked the box for Married and listed her [REDACTED] name on question 18 of the Form DS-156. Moreover, the AAO notes that the instructions provided on the Requested Information from Iranian Applicants state that the applicant remains ultimately responsible for ensuring that the application is properly filled out and for all statements made on or in support of the application. Despite said instructions, on said form, the applicant indicated that "my husband is a professional dentist and he is practicing an and working in Iran" and further listed her spouse's name as "[REDACTED]". By stating that she was married, when in fact she was divorced, when applying for a nonimmigrant visa in September 2005, the applicant led the American Embassy in Bern 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.

The applicant had the duty and the responsibility to review the forms (and obtain translations if any questions on the forms were not clear to her) prior to signing. As such, the AAO concurs with the field office director that the applicant is inadmissible under section 212(a)(6)(C) 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 or their children 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. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. Cf. *Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact

that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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 *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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in [REDACTED] reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 [REDACTED] ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The applicant's U.S. citizen spouse contends that he will suffer emotional and physical hardship were he to remain in the United States while the applicant relocated abroad due to her inadmissibility. The record establishes that the applicant's spouse has been diagnosed with Bipolar Disorder, a chronic condition, and takes numerous psychotropic medications to treat his condition. Due to his mental disorder, he has been deemed gravely disabled and the applicant has been appointed his conservator. As the applicant's spouse's treating physician further details,

[redacted] [the applicant's spouse] is a 68 year-old...Iranian-American married male. He currently lives with his wife and his three year-old daughter.... He has been under my care since December 19, 2008 for Bipolar I Disorder (296.53). He is taking medication for this illness, which is a chronic one that occurs in episodes, with manic or depressed symptoms.

[redacted] symptoms began in 2003, with depression. He has a history of psychiatric admissions and suicide attempts. Currently, he reports suffering from a depressed mood, problems concentrating, diminished appetite and weight loss, and sleep disturbance. [redacted] reports also decreased motivation to handle everyday tasks; specifically, difficulty taking care of his personal hygiene, adhering to the course of medication, changing clothes, doing household chores, and preparing meals.

During his most recent visit, [redacted] expressed anxiety and concern regarding his wife's [the applicant's] immigration status as it relates to his well being. Based on my evaluation of his mental condition, it is my opinion that without his wife's presence, without her care and support, his mental health will worsen.

[redacted] dated May 5, 2010.

Extensive medical documentation has been provided establishing the applicant's spouse's diagnosis of Bipolar Disorder. In addition, evidence of medications prescribed to the applicant's spouse to treat his condition have been submitted by counsel. Moreover, counsel has provided evidence establishing that the applicant has been appointed Conservator for her spouse by the Superior Court of California, County of Santa Clara. Finally, documentation has been provided establishing that when the applicant's spouse has to travel, he must be escorted and cared for at all times. The escort must provide 24 hours personal care, including providing transportation, ensuring that the applicant's spouse takes his medications, and giving the applicant's spouse his meals. *Letter from Ebrahim Pakzad.*

Were the applicant unable to reside in the United States, the applicant's U.S. citizen spouse would have to 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,

counsel asserts that the applicant's spouse would suffer extreme hardship abroad, as he needs to continue to be cared for by mental health professionals familiar with his condition and treatment plan. Counsel further notes that Iran has a poor human rights record and the applicant would never be allowed to be conservator for her husband, thereby causing hardship to the applicant's spouse. *Brief in Support of Appeal*, dated April 19, 2010.

Documentation has been provided establishing the problematic country conditions in Iran, including human rights violations. In addition, the AAO notes that a Travel Warning has been issued by the U.S. Department of State for U.S. citizens and lawful permanent residents, due to ongoing security concerns in Iran. As noted, in pertinent part:

The Department of State warns U.S. citizens to carefully consider the risks of travel to Iran. Dual national Iranian-American citizens may encounter difficulty in departing Iran. U.S. citizens should stay current with media coverage of local events and carefully consider nonessential travel. This supersedes the Travel Warning for Iran issued July 1, 2009, to add information on treatment of dual nationals and a fax number for the U.S. Interests Section at the Swiss Embassy in Tehran.

Some elements in Iran remain hostile to the United States. As a result, American citizens may be subject to harassment or arrest while traveling or residing in Iran. Since 2009, Iranian authorities have prevented the departure of a number of Iranian-American citizens, including journalists, who traveled to Iran for personal or professional reasons, in some cases for several months. Iranian authorities also have detained or imprisoned Iranian-American citizens on various charges, including espionage and posing a threat to national security. Americans of Iranian origin should consider the risk of being targeted by authorities before planning travel to Iran. Iranian authorities deny access to the U.S. Interests Section in Tehran to dual nationals because Iranian authorities consider them to be solely Iranian citizens.

The Iranian government continues to repress some minority religious and ethnic groups, including [REDACTED]. Consequently, some areas within the country where these minorities reside, including the Baluchistan border area near [REDACTED] and Afghanistan, the [REDACTED] of the country, and areas near the Iraqi border, remain unsafe.

Large-scale demonstrations with sometimes violent outbreaks have taken place in various regions throughout Iran, in particular as a result of a volatile political climate following the June 2009 presidential elections. U.S. citizens who travel to Iran should exercise caution.

The U.S. government does not have diplomatic or consular relations with the Islamic Republic of Iran and therefore cannot provide protection or routine consular services to U.S. citizens in Iran. The Swiss government, acting through its [REDACTED] serves as protecting power for U.S. interests in Iran. Neither U.S. passports nor visas to the United States are issued in Tehran. The Iranian government does not recognize dual citizenship and will not allow the Swiss to provide protective services for U.S. citizens who are also Iranian nationals. U.S. citizens of Iranian origin who are considered by Iran to be Iranian citizens have been detained and harassed by Iranian authorities. Former Muslims who have converted to other religions, as well as persons who encourage Muslims to convert, are subject to arrest and prosecution.

Travel Warning-Iran, U.S. Department of State, dated March 23, 2010.

In addition, the AAO notes the following regarding medical care in Iran:

Basic medical care and medicines are available in the principal cities, but may not be available in rural areas. Medical facilities do not meet U.S. standards and sometimes lack medicines and supplies.

Country Specific Information-Iran, U.S. Department of State, dated June 28, 2010.

Based on the documentation provided by counsel with respect to the applicant's spouse mental health condition, the gravity and unpredictability of the symptoms associated with the referenced disorder, the short and long-term ramifications for those afflicted and the need for those suffering from the above-referenced disorder to be consistently monitored and/or treated by mental health professionals familiar with the condition and its treatment, and the problematic country conditions in Iran, as noted by the U.S. Department of State, the AAO concludes that a relocation abroad would cause hardship beyond that normally expected of one facing the removal of a spouse.

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-Morales, 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).

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and children would face if the applicant were to reside in Iran, regardless of whether they accompanied the applicant or remained in the United States, community ties, the applicant's role as conservator for her spouse, and the passage of more than four years since the applicant's immigration violation which led to the field office director's finding of inadmissibility. The unfavorable factor in this matter is the applicant's fraud and/or willful misrepresentation, as discussed in detail above.

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 field office director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.