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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]

H5

Date: APR 07 2011 Office: MOSCOW, RUSSIA FILE: A78 425 625

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 Field Office Director, Moscow, Russia. 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 Ukraine who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or 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(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the Field Office Director*, dated December 2, 2008.

On appeal, counsel states that the applicant "insists she did not intentionally commit fraud, but realizes that perhaps she should have known better and been less naïve. She also regrets not having paid closer attention during the airport interview," where she was scared and exhausted. Counsel further contends the field office director failed to engage in any meaningful analysis of extreme hardship and disregarded some of the factors the applicant presented in showing her husband would suffer extreme hardship. Counsel contends the applicant established the requisite hardship and that the applicant warrants a favorable exercise of discretion. *Letter from* [redacted] dated December 22, 2008.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [redacted] indicating they were married on June 7, 2005; letters from the applicant; letters from [redacted] numerous letters of support, including from [redacted] employer, pastor, relatives, and physician; a psychosocial assessment of [redacted] copies of photographs of the applicant and her family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

> 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.

Section 212(i) provides, in pertinent part:

> (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 . . . .

In this case, the record shows that the applicant attempted to enter the United States on January 30, 2001, using a fraudulent passport and a photo-substituted visa. In her sworn statement, the applicant stated she got the passport "[o]n October 5, 1999, . . . from the passport office." The applicant further stated that she got the visa on "November 18, 1999, in the American Consulate in Kiev." The applicant stated her husband bought her airline ticket and that no one assisted her in coming to the United States. *Record of Sworn Statement*, dated January 30, 2001.

The applicant contends she was not trying to do anything wrong and regrets her mistake. The applicant states that in 2001, she had gone to a travel agency for assistance in traveling to the United States for a twelve day visit. The applicant states that "[w]hat was the most important [part of using a travel agent was that she did] not have to go to Kyiv and to stand for weeks in long queue near the U.S. Embassy." The applicant states that the travel agent called her back in two weeks and said that she had a round-trip ticket to New York. The applicant states that when she arrived in New York, she had problems with the visa and was sent back to Ukraine the same day. According to the applicant, she returned to the travel agency and spoke to the manager who said that her documents were "done correctly." She states she began to cry and asked for a refund, but that they called security and sent her out of the room. She contends she stated that she would report the agency to the police and go to court, but that "a guardian threatened [her] that if [she] want[ed] to stay alive [she has] to sit quietly and say nothing to anybody." According to the applicant, she thought over the events and went to the police. After three days, an officer purportedly told her that there was no such company at that address and the premises had been rented. She contends that a friend dissuaded her from applying to the courts for relief and that because she "feared for life of [her] children, [she] didn't apply in any authorities no more." The applicant states she was the mayor of her village in Ukraine for ten years and has always wanted to follow the law. *Explanation from* [redacted] undated; *Letters from* [redacted] dated October 16, 2008, June 30, 2008, and January 10, 2006.

The record contains a copy of the agreement the applicant purportedly had with the travel agency. The agreement states that the tourist company "Morpheus" "is adjustment of the tourist services sale order provided to individual tourists and tourist groups within the territory of Ukraine and beyond." *Agreement #17-001 of Sale and Purchase Tourist Services*, dated January 4, 2001.

The record also contains a copy of a letter from a police department in Ukraine. The police department's letter states that the applicant went to the police to file a petition regarding Morpheus Travel Agency, but that the agency was not registered and it was "impossible" to find the firm during the investigation. *Letter from* [redacted], dated October 24, 2006.

The record also contains a copy of a Ukrainian court's judgment. According to the judgment, the applicant brought an action against Morpheus Tourist Agency. The judgment states that the applicant "has not ever applied to law enforcement agencies as she f[ea]red for life and health of herself or relatives." The judgment states that the applicant "had the right for the proper services and currently is entitled for governmental protection of her rights," however, the case was closed because "there was not found any data about state registration (termination) or Tourist Agency 'Morpheus' Ltd." *Judg[]ment*, dated September 23, 2008.

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 has not met her burden of establishing that she is not inadmissible for misrepresentation. Although the record contains some evidence supporting her claim that she had used a travel agency for a trip to the United States in 2001, suggesting that she was unaware they had given her fraudulent documents, the applicant has failed to adequately explain a significant inconsistency in the record. In her sworn statement to an immigration inspector on the day she arrived in the United States in 2001, she stated that she obtained her passport on October 5, 1999, "from the passport office" and obtained her visa on November 18, 1999, at the American Consulate in Kiev. *Record of Sworn Statement, supra.* She also stated that she had no assistance in coming to the United States. *Id.* The applicant has not addressed why she misrepresented how, where, and when she obtained the fraudulent documents she used in her attempt to enter the United States. The applicant failed to mention any travel agency to the inspector. Although counsel contends the applicant was scared, exhausted, and questioned in a foreign language, *Letter from* [redacted] the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The Record of Sworn Statement indicates that the statement was taken with the assistance of a Russian interpreter so counsel's assertion of a language problem is not persuasive. Even assuming the applicant was scared and exhausted, she nonetheless provided specific details to the inspector regarding how, where, and when she purportedly obtained her visa and passport, details she later recanted by claiming that she used a travel agency because she did not want to wait in a long line at the U.S. embassy. The applicant has failed to adequately explain or reconcile this inconsistency with competent objective evidence pointing to where the truth lies, as required. *Matter of Ho, supra.* Therefore, the AAO finds that the applicant is inadmissible under 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.

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 her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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-Moralez,* 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 *Cervantes-Gonzalez* 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 I&N Dec. at 886 ("[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.

In this case, the applicant's husband, , states that he has visited the applicant in Ukraine three times and that they are determined to be together. contends he must remain in the United States to be close to his youngest son from a previous marriage. According to after he and his first wife divorced, his youngest son lived with him until he got married. states that his parents were both ill and have passed away and that he wants to make up for the time he lost with his children while he cared for his parents. *Letters from* dated December 7, 2006, and January 10, 2006.

A psychological assessment of states that has visited his wife in Ukraine six times and that he desperately misses her when he is in the United States. According to the social worker, had an idyllic childhood with two loving parents who rarely argued about anything. The social worker states that reported that he and his siblings are all doing quite well emotionally and financially due to their upbringing. The social worker states that just before heading to college, and his girlfriend were married. The social worker contends excelled professionally, but his marriage fell apart and the couple divorced after their children left home. According to the social worker, if who does not speak Russian, were forced to leave his job in order to live with his wife in Ukraine, he would be unable to find comparable employment and stands to lose over $4,000,000 in retirement and pension benefits. In addition, the

social worker states that with the exception of a "brief hiatus," has lived in Clifton, Illinois, his entire life, goes to the church where his great grandparents worshipped, and teaches baseball on the exact field where he learned to play ball. The social worker also contends that if were to remain in the United States without his wife, he would be extremely lonely and depressed. The social worker contends recently turned down a promotion at work due to the stress of his wife's immigration situation, the first time he has ever turned down a promotion. *Psychosocial Assessment for Extreme Hardship Consideration*, undated.

A letter from employer states that has worked at the same place of employment, a nuclear plant, for almost twenty years and will be eligible for full retirement benefits in nine years. He states that is one of five full-time instructors at the nuclear plant, that the plant has a shortage of operators and instructors, and that there is no individual to replace if he leaves the plant. According to the employer, without the required number of licensed individuals, the plant would be shut down. *Letter from* dated October 25, 2006; *see also Biographic Information form (Form G-325A)*, dated August 1, 2005 (stating has worked for Exelon Generation Co. since April 1987).

A letter from s physician states that "[i]n the recent past has been] treated on multiple occasions for conditions related to or aggravated by stress. . . ." The physician states that has been prescribed medications to alleviate these conditions. According to the physician, having wife in the United States with him would be in the best interests of his overall health. *Letters from* , dated June 11, 2008, and November 13, 2006.

A letter from an attorney states that father's estate is in probate and that is the executor of the estate. According to the attorney, it is not uncommon for probate to take several years to complete and is the only child well versed in his father's affairs. *Letter from* dated October 25, 2006.

After a careful review of the record, the AAO finds that if had to move to Ukraine to be with his wife, he would experience extreme hardship. The record shows that is currently fifty years old, was born in the United States, has lived in the United States his entire life, and, according to the social worker, does not speak Russian. In addition, the record shows that has worked for the same employer for over twenty years. *Letter from Letter from supra; Form G-325A, supra.* According to his entire family, including his siblings and his children from a previous marriage, live in the United States. Considering all of these unique factors cumulatively, the AAO finds that if had to move to Ukraine, the hardship he would experience is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. s contentions that he is lonely and depressed without his wife are difficulties that are typical of individuals separated as a result of inadmissibility or exclusion and do not rise to the level of extreme

hardship based on the record. Although the record contains a psychosocial assessment for the social worker does not diagnose him with any mental health condition, including depression. Although the input of any mental health professional is respected and valuable, the record does not show that who had an idyllic childhood and continues to have a close and supportive family, would suffer extreme hardship if he remained in the United States, or that his situation is unique or atypical compared to others in similar circumstances. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (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 physical health, the letter from his physician fails to provide any details regarding the stress-related conditions from which he purportedly suffers and takes medications. The letter fails to address the diagnosis, prognosis, treatment, or severity of any condition. In addition, the letter does not suggest, and does not claim, that he is limited in his daily activities or that he requires his wife's assistance in any way. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed.

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.