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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

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Date: **NOV 10 2011** Office: PHILADELPHIA, PENNSYLVANIA FILE:

IN RE: Applicant:

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Burkina Faso who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or the willful misrepresentation of a material fact. The applicant is married to a United States citizen and the father of a United States citizen stepchild. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 his spouse.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated November 9, 2009.

On appeal, the applicant, through counsel, contends that the "decision is not supported by law. The Adjudication Officer did not take into consideration all the factors." *Form I-290B*, filed December 9, 2009.

The record includes, but is not limited to, counsel's brief in support of the Form I-601, statements from the applicant and his wife, letters of support for the applicant and his wife, medical documents for the applicant and his wife, tax documents, employment verification documents for the applicant's wife, insurance documents, household and utility bills, bank statements, and a U.S. Department of State country profile on [REDACTED]. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an 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 resident spouse or parent of such an alien...

In the present case, the record indicates that on May 26, 2005, the applicant filed a nonimmigrant visa application (Form DS-156) and stated that he was married and the father of two children. On June 11, 2005, the applicant entered the United States on a B-2 nonimmigrant visa with authorization to remain in the United States until December 8, 2005. The applicant failed to depart the United States when his authorization expired. On February 14, 2008, the applicant married a United States citizen. On May 2, 2008, the applicant's wife filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). During the applicant's adjustment interview, the applicant admitted that he misrepresented his marital status in his nonimmigrant visa application. Additionally, he admitted that he had no children. Based on these misrepresentations, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

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 his stepchild can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. *Supra* at 565. 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 a statement dated December 2, 2009, [REDACTED] states the applicant and his wife are under her “care primarily for HIV disease.” [REDACTED] also states that the applicant’s wife was diagnosed with severe arthritis. In an email dated December 7, 2009, the applicant’s wife states her HIV diagnosis “can sometimes caused [sic] severe depression.” She claims that “dealing with the secrecy of [being] HIV positive” causes “ongoing stress.” The applicant’s wife states her medical conditions “require constant medical follow[-]up,” and she “would not receive the same type of care in Africa.” In a brief in support of the Form I-601 dated July 13, 2009, counsel states the applicant’s wife “requires a medication regimen that is currently not available in a third world country.” The AAO notes that in the submitted U.S. Department of State country profile, the U.S. Department of State reports that [REDACTED] is “one of the poorest countries in the world.” In a statement dated July 6, 2009, [REDACTED] states that if the applicant’s wife joins the applicant in [REDACTED] “she would lose the access she currently has to all the medications and other treatments that are currently keeping her healthy and functional, with a more direct detrimental impact on her health and well-being.” The AAO notes that the record does not contain any documentary evidence supporting [REDACTED] assertion that the applicant’s wife cannot receive treatment for her medical and mental health conditions in [REDACTED], that she has to remain in the

United States to receive treatment, or that her medical and mental health conditions would affect her ability to relocate. However, the AAO notes the applicant's wife's concerns regarding her medical and mental health conditions.

The record reflects that the applicant's wife is a native of Haiti and a citizen of the United States. In a statement dated July 7, 2009, the applicant's wife states she has all of her family in the United States, including her daughter. Additionally, she states she helps her sister, who was diagnosed with cancer. Counsel states "it would be extremely difficult for [the applicant's wife] to be separated from her family." The applicant's wife states she does speak French, but she does "not understand [the applicant's] native language." Counsel states the applicant's wife's "chance of finding a job [in Burkina Faso] is extremely slim." The applicant's wife states "[redacted] is one of the poorest countries in the world." As noted above, in the submitted country profile on [redacted], the Department of State reports that [redacted] is one of the poorest countries in the world." The AAO notes the applicant's wife's concerns regarding the difficulties she would face in relocating to [redacted]

The AAO acknowledges that the applicant's wife has been residing in the United States for many years and that she may experience some hardship in relocating to [redacted]. Based on the applicant's spouse's serious medical condition, her lack of ties to [redacted], the country conditions in [redacted], her separation from her family in the United States including her daughter and ill sister, financial issues, and her mental health issues, the AAO finds that the applicant's wife would suffer extreme hardship if she were to join the applicant in [redacted]

Regarding the hardship the applicant's wife would suffer if she were to remain in the United States, [redacted] indicates that "[h]aving the support of [the applicant] is important to [the applicant's wife's] health maintenance, both emotionally and physically." As noted above, the applicant and his wife are being treated for HIV disease. [redacted] also states that the applicant "provides critical emotional support," he contributes financially, and "[w]ithout this support [the applicant's wife] risks losing the health gains she has worked so hard for." [redacted] states the applicant "has provided [the applicant's wife] with a reason to stay healthy that cannot be overestimated." The applicant's wife states "[h]aving someone who understands the issue involved in the disease and can [provide] moral and emotional support helps tremendously in the health process." As noted above, the applicant's wife states that sometimes she is depressed. She claims that having the applicant "by [her] side is one of the biggest treatments other than medications." She states that she "would be destroyed if [the applicant] leaves." As noted above, the applicant's wife states she suffers from stress with dealing with her HIV positive status. The applicant's wife states "[t]he emotional support that [she] get[s] from [the applicant] helped [her] tremendously, he contributes financially, and he provides assistance with taking meds, errands like going to [the] pharmacy, helping to get to [doctor's] appts. He is very good around the house[,] he cooks and keeps the [house] tidy." Additionally, the record establishes that the applicant's wife suffers from arthritis. The AAO notes the applicant's wife's concerns.

Counsel states the applicant's wife is currently unemployed. The applicant's wife states the applicant "is the only support [she] has." Counsel states the applicant's wife wants to attend school, and if the applicant "has to leave the United States, it would be extremely difficult for [the applicant's wife] to attend school and pay for her living expenses. She needs the financial and emotional support of [the

applicant].” While the AAO notes the applicant’s wife’s claims of financial hardship, it does not find the record to support them. The AAO finds the record to include some documentation of the applicant’s wife’s income and expenses; however, this material offers insufficient proof that she would be unable to support herself in the applicant’s absence. However, even though the record fails to establish that the applicant’s spouse is unable to meet her financial obligations, the AAO notes the applicant’s wife’s financial concerns.

The AAO finds that when the applicant’s wife’s medical, emotional, and financial issues are considered in combination with the normal hardships that result from the permanent separation of a loved one, the applicant has established that his wife would experience extreme hardship if she remained in the United States. Accordingly, the applicant has established extreme hardship to a qualifying relative under section 212(i) of the Act.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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 section 212(h)(1)(B) 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 adverse factors in the present case are the applicant’s misrepresentations, unauthorized employment, and unlawful presence in the United States. The favorable and mitigating factors are the applicant’s United States citizen wife and stepchild, the extreme hardship to his wife if he were refused admission, the letters of support, and the absence of a criminal record.

The AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse

factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, 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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is approved.