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

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DATE: **OCT 12 2011** OFFICE: **BANKOK, THAILAND** FILE: [REDACTED]
IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v); and Immigration and Nationality Act section 212(i); 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,

for Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Bangkok, Thailand and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Cambodia, was found inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or misrepresentation due to his apparent use of a false identity and failure to disclose his previous immigration history on his application for the immigrant visa underlying this waiver of inadmissibility application. The applicant is also inadmissible under INA § 212(a)(9)(B)(i)(II), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States, based on his overstay of his prior admission on a K-1 visa issued to him under a different identity. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen wife. Whether that I-130 should be revoked is at issue due to the fraud/misrepresentation included in that petition, but that question is not before the AAO. The applicant seeks a waiver of inadmissibility pursuant to INA § 212(i), 8 U.S.C. § 1182(i), and INA § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), based on extreme hardship to his U.S. citizen wife.

On May 29, 2009, the District Director concluded that the applicant's wife would suffer extreme hardship should she have to relocate to Cambodia to be with her spouse, but denied the waiver application as a matter of discretion. *See Decision of District Director* dated May 29, 2009.

On appeal, the applicant states that hardship to his stepchildren should also be taken into account, mitigating circumstances surrounding his immigration violations should be considered, and the favorable factors in his case outweigh the negative factors.

The record includes legal arguments by the applicant's attorney, a statement by the applicant, statements by the applicant's U.S. citizen wife, letters from the applicant's stepchildren, a statement by the applicant's U.S. citizen sister, a psychological report concerning the applicant's U.S. citizen spouse, medical records for the applicant's U.S. citizen spouse, documentation regarding the applicant's spouse's prior marriage and the abuse that she suffered, documentation of communication between the applicant and his U.S. citizen spouse, wire transfers sent to the applicant by his U.S. citizen wife, birth certificates for the applicant's step-children, Form I-290B, Form I-601, Form G-325A, approved I-130 and I-129F filed on the applicant's behalf by his U.S. citizen spouse, country conditions reports for Cambodia, and records concerning the applicant's prior immigration history in the United States under a different identity.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO will first address the question of whether the applicant is admissible to the United States. The applicant has been found to be inadmissible under two provisions of the INA.

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

- (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 applicant is inadmissible under this section of the INA due to the fact that he misrepresented his identity and failed to disclose his prior immigration history on his application for an immigrant visa to the United States. The applicant previously applied for and obtained multiple immigration benefits under the name of [REDACTED] with the date of birth of February 22, 1970 and parents [REDACTED]

In connection with the immigrant visa application underlying his current application for a waiver of inadmissibility, the applicant stated that his name was [REDACTED] with a date of birth of February 15, 1968 and listed his parents as [REDACTED]

In addition to using an apparent false identity in connection with his visa application, the applicant failed to disclose his prior immigration history in the United States. In fact, the applicant states that his intent in presenting himself under a false identity to his U.S. citizen wife and to the U.S. immigration authorities in connection with the current application was to conceal his prior engagement to a U.S. citizen and his prior immigration history in the United States. Upon confrontation with this derogatory information by the consular officials, the applicant continued to deny his misrepresentation before finally conceding to his use of multiple identities and his failure to disclose his prior immigration history.

The applicant is also inadmissible under INA § 212(a)(9)(B)(i)(II).

Section 212(a)(9) of the Act provides:

(B) ALIENS UNLAWFULLY PRESENT.-

- (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

- (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal, or

- (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

The applicant was previously admitted to the United States on a K-1 Fiancé visa on January 13, 2001, under the name of [REDACTED]. His admission, according to the terms of his visa, was valid until April 13, 2001. Because the applicant did not marry his fiancée, he was required to depart the United States on or before April 13, 2001. The applicant remained in the United States until September 9, 2002, thus accruing over one year of unlawful presence. The applicant states that he believed that he was allowed to remain in the United States because his father, who was then a lawful permanent resident of the United States, filed an I-130 immediate relative petition on his behalf on April 19, 2001. The filing of an I-130 immediate relative petition by itself does not confer any lawful immigration status or toll the accrual of unlawful presence under INA § 212(a)(9)(B). A visa was not immediately available to the applicant based on his status as an adult son of a U.S. lawful permanent resident. Moreover, as a requirement of his entry on a K-1 visa, the applicant would not have been permitted to adjust his status to a lawful permanent resident of the United States by other means other than through marriage to the petitioner on his fiancé visa. The applicant thus accrued unlawful presence in the United States from April 14, 2001 until September 9, 2002 and remains inadmissible under INA § 212(a)(9)(B)(i)(II) until September 9, 2012.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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.

Moreover, Section 212 (a)(9)(B)(v) provides:

- (v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The standard for a waiver of inadmissibility set forth at INA § 212(a)(9)(B)(v) is the same standard as required for a waiver under INA § 212(i), for fraud or misrepresentation. Both provisions of the law require that the applicant demonstrate that refusal of his admission would result in extreme hardship to his U.S. citizen or lawful permanent resident spouse or parent.

In this case the applicant's qualifying relative is his U.S. citizen wife. The applicant's sister states that the applicant's father no longer resides in the United States as a lawful permanent resident and the applicant has not made any indication that he is seeking a waiver based on hardship to his father. The record contains references to the hardship that the applicant's stepchildren would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under INA § 212(a)(9)(B)(v) and INA § 212(i) and hardship to the applicant or the applicant's stepchildren will not be separately considered, except as it may affect the applicant's spouse.

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*,

21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The district director found that the applicant sufficiently evidenced that his U.S. citizen spouse would suffer extreme hardship if he were not admitted to the United States. The AAO will not disturb that decision.

Extreme hardship is a requirement for eligibility, but even if established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the

alien began his 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 and service to 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).

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The unfavorable factors in this case include the applicant's prior overstay of his fiancé visa in the United States, the applicant's use of fraudulent identity to obtain an approved immediate relative petition and to attempt to obtain an immigrant visa to the United States, the applicant's failure to disclose his prior immigration history in connection with his current visa application, the lack of evidence demonstrating rehabilitation of the applicant's moral character, and the lack of evidence illustrating what potential value or service to the community the applicant would provide in the United States. The applicant's spouse states that she hopes that the applicant's admission to the United States would allow her to rebuild her family, but no concrete evidence is provided to demonstrate the importance of the applicant's admission to diminishing the hardship on the applicant. The applicant's spouse provides evidence that she is the breadwinner for her family and that she sends money to the applicant in Cambodia. No evidence is provided that the applicant would be able to ease the financial burden on his spouse were he to be admitted to the United States. Additionally, the applicant's spouse's emotional trauma existed prior to her relationship with the applicant and is not significantly tied to the applicant's inadmissibility by the evidence in the record. Aside from a few emails and the text messages referenced by the applicant's spouse, no evidence is provided of the emotional support or care that the applicant provides or would provide to his spouse or stepchildren in the United States. Moreover, the recent and serious nature of the applicant's most recent immigration violation, namely his use of a false identity, cloud his entire application, calling into question not only his moral character, but also the validity of his claimed familial relationships. Significant favorable evidence is required to overcome these issues. The AAO does not find that the explanations provided by the applicant for his inadmissibility mitigate the serious nature of his immigration violations.

The favorable factors in this case include the applicant's claimed family ties in the United States, the applicant's lack of any criminal convictions, and the extreme hardship to the applicant's U.S. citizen spouse, namely her ties to the United States and her medical history.

The totality of the evidence demonstrates that the unfavorable factors in this case outweigh the favorable factors.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.