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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**

H5

Date: **AUG 01 2012** Office: DETROIT, MICHIGAN

FILE: [REDACTED]

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Detroit, Michigan, and 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a U.S. citizen and the father of two U.S. citizen children. 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 and children.

The Field Office Director found that the applicant 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 June 10, 2010.

On appeal, the applicant, through counsel, asserts that the Field Office Director erred in denying the applicant's waiver application, as "it has not been established that the applicant is inadmissible." *Form I-290B, Notice of Appeal or Motion*, filed July 8, 2010. However, in the event that the applicant is determined to be inadmissible to the United States, counsel claims that the applicant's wife will suffer extreme hardship if the applicant is not admitted to the United States. *Id.* Counsel submits new evidence of hardship on appeal.

The record includes, but is not limited to, counsel's appeal brief and brief in support of the Form I-601, a statement from the applicant's wife, letters of support, a psychological evaluation for the applicant's wife, medical documents for the applicant's wife and son, photographs, financial documents, employment documents for the applicant, and documents pertaining to the applicant's removal proceeding. 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) 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.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

- (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 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.

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. 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.

In the present case, the record indicates that on May 26, 2002, the applicant attempted to enter the United States by presenting a fraudulent B-2 nonimmigrant visa. He was placed into expedited-removal proceedings, and on December 11, 2002, an immigration judge ordered the applicant removed from the United States.¹

In his appeal brief dated August 9, 2010, counsel claims that the applicant believed that his B-2 nonimmigrant visa came from a “reputable travel agency-type service in Russia,” and he was unaware that it was fraudulent. The applicant states he obtained the visa from friends who obtained it from a company; however, he did not know the company’s name. *See Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act*, dated May 26, 2002. He also claims that he did not know that the visa was fraudulent. Counsel states that because the applicant did not know the visa was fraudulent, his actions do not constitute a willful misrepresentation.

With respect to the willfulness of the applicant’s misrepresentation, the Department of State Foreign Affairs Manual, Volume 9 § 40.63 N5, in pertinent part states that, “[t]he term “willfully” as used in INA 212(a)(6)(C)(i) is interpreted to mean knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise.” The AAO finds counsel’s contention that the applicant is not inadmissible to the United States through the misrepresentation of a material fact to be unpersuasive. The AAO observes that in waiver proceedings the burden of proof is on the applicant to establish admissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. Although the applicant claims he obtained his nonimmigrant visa from friends who had obtained it from a company, the applicant was unable to provide details such as the name of the company or provide any information regarding the fraudulent visa. If the preponderance of the evidence shows that “any fraud was not intentional or with the intent to deceive, or that the misrepresentation was not willful,” then it should be determined that the applicant has met his burden of proving that he is not inadmissible under section 212(a)(6)(C)(i) of the Act. *See Memorandum from Donald Neufeld, Act. Assoc. Dir., Dom. Ops., Lori Scialabba, Assoc. Dir., Refugee, Asylum and Int. Ops., Pearl Chang, Act. Chief, Off. of Pol. and Stra., U.S. Citizenship and Immigration Serv., to Field Leadership, “Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators,”* dated March 3, 2009. However, because the applicant failed to provide any evidence to support his claim that he was unaware of the fraud, the AAO finds that the applicant has not met his burden of proving he is not inadmissible. Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) for willfully misrepresenting a material fact in order to seek admission into the United States.

¹ The AAO notes that the applicant is inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), for being ordered removed from the United States and will need to file a Form I-212, Application for Permission to Reapply for Admission After Deportation or Removal.

A waiver of inadmissibility under section 212(i) of the Act is dependent first 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 and his children 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien'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 section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

With respect to hardship the applicant's wife would experience if she were to relocate to Ukraine, in a letter dated April 25, 2010, she states she cannot see herself doing so because of the "poverty, unfit government and disregard for a human life" there. Counsel states the cultural changes of the last eleven years would make Ukraine seem foreign to her now. The applicant's wife has resided in the United States for over eleven years and is integrated into American society. The applicant's wife states she wants to raise their son in the United States. Additionally, she claims that she would need to finish school in Ukraine to obtain employment in her field as a daycare provider. Further, she states that she suffers from migraines which are debilitating at times. Medical documentation in the record establishes that the applicant's wife suffers from migraine headaches.

The AAO acknowledges that the applicant's wife is a citizen of the United States and relocation abroad would involve some hardship. However, the applicant's wife also is a native of Ukraine, and it has not been established that she does not speak the native language or that she has no family ties to Ukraine. She notes that her mother resides in Ukraine. Additionally, there is no evidence in the record to establish that the applicant's wife cannot receive medical treatment in Ukraine for her medical condition. Regarding the hardship that the applicant's children may experience in Ukraine, they are not qualifying relatives, and the applicant has not shown that hardship to their children would elevate his wife's challenges to an extreme level. Further, though the applicant's wife states she would have to return to school to obtain employment in Ukraine, the record does not contain documentary evidence showing that doing so would amount to hardship or that she would be unable to obtain employment upon relocation. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Ukraine.

In addition, the record fails to establish extreme hardship to the applicant's wife if she remains in the United States. Counsel states the applicant's wife would suffer emotionally if the applicant returns to Ukraine. The applicant's wife states that when the applicant was detained by immigration authorities for three months, she was very depressed. In a psychological evaluation dated April 21, 2010, [REDACTED] diagnosed the applicant's wife with major depressive disorder, anxiety disorder, and dependent personality disorder. He concluded that if the applicant were deported, her symptoms would intensify and this would like require "a

psychiatric medication intervention.” Additionally, as noted above, the applicant’s wife states she suffers from migraine headaches that limit her ability to function. Counsel also states the applicant’s wife will suffer hardship in having to raise their children alone. The applicant’s wife states their son would suffer if he was separated from the applicant.

Counsel asserts the applicant’s wife would lose the applicant’s financial support, as he will not be able to “earn sufficient wages to support himself” in Ukraine and his family in the United States. The record establishes that in 2008, the applicant and his wife claimed an income of \$12,413 and in 2009, \$14,721.

The AAO acknowledges that the applicant’s wife may suffer some emotional difficulties in being separated from the applicant. While it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished his wife’s emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. Though counsel refers to financial difficulties, the record does not contain evidence corroborating counsel’s statement that the applicant will be unable to support himself or his family in the United States. Additionally, the applicant has not distinguished his wife’s financial challenges from those commonly experienced when a family member remains in the United States. Further, the record does not contain documentary evidence establishing that the applicant would be unable to obtain employment in Ukraine and thereby financially assist his wife from outside the United States. The AAO also notes that the applicant’s son may suffer some hardship in being separated from the applicant; however, the applicant has not shown that his hardship will elevate his wife’s challenges to an extreme level. Moreover, the applicant’s wife may suffer some hardship in having to care for their children alone; however, no documentation has been submitted establishing that her hardship would be extreme. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.