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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]

HLS

Date: **AUG 01 2012**

Office: MIAMI

FILE: [Redacted]

IN RE: [Redacted]

PETITION: 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 PETITIONER:

[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 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,

Maria Yeh

Perry Rhew
Chief, Administrative Appeals Office

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

The record establishes that on October 22, 2002, the applicant's then U.S. citizen spouse, [REDACTED] requested that the Form I-130, Petition for Alien Relative (Form I-130), filed by her on behalf of the applicant in September 2001 be withdrawn. The basis for the withdrawal request was [REDACTED] admission that she married the applicant to assist him in obtaining permanent residency and he helped her with her expenses and the marriage was considered invalid. *Reason for Withdrawal of Petition*, dated October 22, 2002. Notes in the file indicate that at the I-485 interview on October 22, 2002, upon being advised that a marriage interview would be conducted and the penalties for entering into a marriage to circumvent immigration laws, [REDACTED] chose to withdraw the application for the applicant and rendered the above-referenced statement. No Notice of Intent to Deny the Form I-130 or Request for Evidence was issued as [REDACTED] requested that the Form I-130 be withdrawn. The applicant and [REDACTED] divorced in February 2003 and the Form I-130 was withdrawn by the USCIS on July 6, 2003.

The District Director determined that the applicant was 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), as an alien who has sought to procure a visa, other documentation, or admission to the United States through fraud or misrepresentation. The District Director specifically noted that [REDACTED] had withdrawn her Form I-130 stating, in part, she wanted to help the applicant obtain his residency and he in turn helped with her expenses. The District Director further concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *Decision of the District Director*, dated March 11, 2010.

On appeal, counsel for the applicant submits the following: the Form I-290B, Notice of Appeal (Form I-290B); an attachment to the Form I-290B; copies of previously issued USCIS decisions pertaining to the applicant; an Interoffice Memorandum, dated February 16, 2005; and previously submitted affidavits and mental health documentation. The entire record was reviewed and considered in rendering this decision.

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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (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 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 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.

Regarding the field office director's finding that the applicant is inadmissible under 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, on appeal counsel contends that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. Counsel asserts that the applicant was never confronted with a notice of intent to deny and thus never had the opportunity to rebut with evidence the alleged statement made by his ex-wife with respect to the validity of the marriage. Counsel further contends that a withdrawal of a petition cannot be equated with a finding of fraud. *See Form I-290B*, dated March 17, 2010.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

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 record contains substantial and probative evidence that the applicant's marriage to [REDACTED] was entered into for the sole purpose of evading the immigration laws. [REDACTED] specifically admitted, under oath and of her own free will, that the marriage between her and the applicant was not considered valid. As such, the AAO concurs with the district 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. The applicant's lawful permanent resident spouse is the only qualifying relative in this case. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. 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).

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-I-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 applicant's lawful permanent resident spouse asserts that she will suffer extreme hardship were she to remain in the United States while the applicant relocates abroad due to his inadmissibility. In a declaration she asserts that she is in her 60s and it is not easy to find a good marriage and remake a new life and she thus wants to be with her husband. She notes that the applicant is a good husband, a friend, a companion, a confidant, a lover and an incredible person in her life. Moreover, the applicant's spouse details that she is unemployed and receiving unemployment compensation but without her husband's monthly unemployment compensation, she will not be able to make ends meet. Finally, the applicant's spouse details that she has numerous health problems, including high blood pressure, cholesterol, insomnia and depression and without her husband, she will not be able to care for herself. *Affidavit of* [REDACTED] [REDACTED] dated October 30, 2009.

In support, a letter and psychiatric evaluation has been provided by [REDACTED] noting that the applicant's spouse was seen on October 23, 2009 as an emergency due to a severe panic attack with depression and positive death wishes. [REDACTED] explains that the applicant's

spouse has an extensive history of Major Depression and the applicant takes care of her and as a result, she has not experienced any crisis/episodes but as a result of her husband's immigration situation, she had a panic attack and is experiencing thoughts of hopelessness and sadness. No documentation has been provided establishing the applicant's spouse's history of depression. Nor has any documentation been provided on appeal establishing the applicant's spouse's current mental state. It has thus not been established that the applicant's spouse will experience emotional hardship beyond others who are in the same situation. It has also not been established that the applicant's spouse is unable to travel to Argentina to visit her husband. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Finally, with respect to the financial hardship referenced by counsel, no supporting documentation has been provided by counsel establishing the applicant's and his spouse's current financial situation, to establish that without the applicant's unemployment compensation contributions, the applicant's spouse will experience hardship. As noted above, assertions without supporting documentation do not suffice to establish extreme hardship. Nor has it been established that the applicant will be unable to obtain gainful employment in Argentina, thus allowing him to assist his wife should the need arise. While the applicant's spouse may need to make adjustments with respect to the household finances, it has not been established that such adjustments would cause her extreme hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of a long-term separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not been established that the applicant's lawful permanent resident spouse will experience extreme hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility.

With respect to relocating abroad, the applicant's spouse contends that she would experience hardship. She explains that she is from Cuba and has no ties to Argentina. She contends that she will not have documents to enter, no status in Argentina and no right to work in Argentina. She further maintains that she will experience age discrimination in Argentina and will not be able to obtain employment. Finally, the applicant's spouse details that she has a lawful permanent resident daughter, born in 1978, residing in Florida and long-term separation from her would cause her hardship. *Supra* at 1. No supporting documentation has been provided establishing the hardships the applicant's spouse references in her affidavit with respect to relocating abroad to reside with the applicant. As such, extreme hardship upon relocation has not been established.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected,

disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships she would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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. The waiver application is denied.