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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: JUN 25 2012 Office: MIAMI, FLORIDA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (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 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 with the field office or service center that originally decided your case by filing a 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, Miami, Florida. 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 Argentina who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for 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 in order to reside with her husband in the United States.

The field office director found that the applicant's first Form I-485 was denied based on the fact that the applicant entered into a marriage to circumvent the immigration laws of the United States. In addition, the field office director found that the applicant failed to establish extreme hardship to a qualifying relative. The field office director denied the application accordingly. *Decision of the Field Office Director*, dated June 2, 2010.

On appeal, counsel contends that the applicant is not inadmissible. Specifically, counsel contends the applicant's first Form I-485 was denied because the Form I-130 was withdrawn by the applicant's ex-husband and there was no mention of marriage fraud. In addition, counsel contends the applicant was never questioned by the interviewing officer about marriage fraud and there was not a complete investigation of this allegation.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, Mr. [REDACTED] indicating they were married on February 7, 2009; a declaration and a statement from the applicant; a letter and a declaration from Mr. [REDACTED] letters from a nurse and copies of the applicant's medical records; letters of support; a medical diagnostic report for Mr. [REDACTED] a letter from Mr. [REDACTED]'s employer; and copies of bank account statements, receipts, and other financial documents. 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 in May 2007, the applicant's first husband, Mr. [REDACTED] filed a *Petition for Alien Relative (Form I-130)* on the applicant's behalf. On October 18, 2007, during the applicant's adjustment interview, Mr. [REDACTED] stated that the applicant "is not my wife." According to interview notes in the record, Mr. [REDACTED] said he was sorry for filing the papers and stated that he was not paid, but wanted to help the applicant get her immigration papers. He signed a form withdrawing the Form I-130 stating as the reason for the withdrawal, "I will cancel my petition for [the applicant] because she is not my wife. She don't paid me [sic] any money in order to help her."

On appeal, counsel contends the applicant did not engage in marriage fraud and that Mr. [REDACTED] statements do not prove fraud. Counsel contends the applicant was never questioned by the interviewing officer and that on the day of the interview, "maybe . . . the couple . . . intended on separating." Relying on *Matter of Laureano*, 19 I. & N. Dec. 1 (BIA 1983), and *Agyeman v. INS*, 296 F.3d 871 (9th Cir. 2002), counsel contends the Service needs to look at the intention of the couple at the time the marriage took place. Counsel also contends that the applicant should have had an opportunity to rebut allegations of marriage fraud at the time the petition was withdrawn, not several years later. A declaration from the applicant states that she and her ex-husband remained married for a year after the interview before he gave her the ultimatum of moving to California or leaving her behind. The applicant states she decided to stay in Miami. She states that there was never any fraud involved in their marriage and that she was shocked to learn of this allegation. A copy of the divorce decree in the record shows that the applicant and Mr. [REDACTED] divorced on September 4, 2008. A letter of support in the record states that the applicant "has been cruelly cheated by her ex-husband which she married with love and illusions." According to this letter, the applicant's ex-husband "was abusive with her; he would humiliate and mistreat her emotionally" and did not want to be with her anymore. Another letter in the record states that the applicant and Mr. [REDACTED] "were a bona fide couple that despite that [the applicant] entered into the marriage very much in love and good faith, Mr. [REDACTED] apparently did not, he made her suffer and mentally abused her constantly."

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).

After a careful review of the record, the AAO finds the applicant has not met her burden of proving she is admissible to the United States. As the Board of Immigration Appeals (BIA) stated in *Matter of Laureano*,

The central question is whether the bride and groom intended to establish a life together at the time they were married. . . . The conduct of the parties after marriage is relevant to their intent at the time of marriage. . . . Evidence to establish intent could take many forms, including, but not limited to, proof that the beneficiary has been listed as the petitioner's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence, and experiences.

Matter of Laureano, 19 I. & N. Dec. at 2-3 (citations omitted); see also *Agyeman v. INS*, 296 F.3d at 882-83 (stating that in addition to the above factors, evidence of a bona fide marriage may also include shared credit cards, joint ownership of a car or other property, medical records showing the other spouse as the person to contact, or telephone bills showing frequent communication between the spouses). In addition, the BIA stated that if there is reason to doubt the validity of the marital relationship, the burden is on the applicant to present evidence to show that the marriage was not entered into for the purpose of evading the immigration laws, and that although the withdrawal of a first visa petition can be overcome by new evidence, the petitioner bears a "heavy burden" to establish the bona fides of the marriage. *Matter of Laureano*, 19 I. & N. Dec. at 3-4.

In this case, the record contains a declaration from the applicant and two letters stating that the applicant was in a bona fide marriage with Mr. [REDACTED]. The AAO finds that this evidence is insufficient in showing that the applicant was in a bona fide marriage with Mr. [REDACTED]. The two letters in the record provide no details regarding the applicant's previous marriage, and the writers of the letters do not contend that they ever met Mr. [REDACTED] or spent time with him and the applicant as a couple. There is no recounting of shared experiences and no suggestion they attended the wedding ceremony even though both writers claim they have known the applicant since before she married Mr. [REDACTED]. To the extent counsel contends it was error for the field office director to consider the alleged fraud almost three years after the fact, the AAO notes that even if the field office director had not considered the issue, an issue not addressed by the field office director may be considered by the AAO in the first instance. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis). In addition, to the extent counsel contends the applicant has the right to see the officer's interview notes, counsel may request a copy of the applicant's file by filing a Freedom of Information Act request.

In sum, the applicant has not met her burden of providing sufficient independent and objective evidence to meet her burden of proving she is admissible to the United States. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant states that she has been diagnosed with and treated for cancer. She states her cancer was discovered when she had emergency medical treatment due to a motorcycle accident in August 2008. She states that although chemotherapy and radiation therapy have concluded, she still has follow-up appointments every six months. The applicant also states that a screw was inserted in her left clavicle as a result of the motorcycle accident and that she still needs to have surgery on her clavicle. She states she experiences excruciating pain on a daily basis and fears her shoulder will never heal properly if she is unable to have surgery in Argentina. According to the applicant, medical care in Argentina is very expensive and advanced care for cancer patients is not readily available. In addition, the applicant contends it would be hard for her husband to find employment in Argentina.

The applicant's husband, Mr. [REDACTED] states that his wife is his soul mate and that he was crushed when he found out his wife's waiver application was denied. He contends it would be the end of his world if his wife is not allowed to stay in the United States. According to Mr. [REDACTED] his wife has almost lost her life on two occasions – from a motorcycle accident and from breast cancer. He states that his wife will not receive comparable medical care in Argentina.

After a careful review of the record, there is insufficient evidence to show that Mr. [REDACTED] will suffer extreme hardship if his wife's waiver application were denied. Although the AAO is sympathetic to the couple's circumstances, if Mr. [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. The AAO recognizes that the record is replete with evidence showing that the applicant is recovering from breast cancer and had a motorcycle accident that resulted in a shoulder injury. Nonetheless, the only qualifying relative in this case is the applicant's husband, Mr. [REDACTED]. The evidence in the record does not show that the applicant's medical issues cause extreme hardship to her husband and there is no suggestion in the record that she requires his assistance in any way. The record does not contain any evidence indicating that the applicant's medical issues cannot be adequately monitored and treated in Argentina, and there is no evidence addressing the quality of medical care in Argentina or the costs involved with obtaining care in Argentina. In sum, the record does not show that Mr. [REDACTED] separation from his wife is unique or atypical compared to other individuals separated as a result of inadmissibility or exclusion. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining extreme hardship as hardship that was unusual or beyond that which would normally be

expected upon deportation). Therefore, even considering all of the evidence in the aggregate, there is insufficient information in the record to show that Mr. [REDACTED] would suffer extreme hardship if he decided to remain in the United States without his wife.

Furthermore, the record does not show that Mr. [REDACTED] would suffer extreme hardship if he relocated to Argentina to be with his wife. The record shows that Mr. [REDACTED] was born in Cuba and, according to the applicant, his entire family remains in Cuba with the exception of one distant cousin whom he never sees. Aside from an employment verification letter from his employer, there is no evidence in the record showing that Mr. [REDACTED] has strong community ties in the United States. In addition, according to his Biographic Information form (Form G-325A), Mr. [REDACTED] has worked as a janitor, a butcher, and in a warehouse. There is no evidence in the record indicating he would be unable to find employment in Argentina. Moreover, there is no evidence Mr. [REDACTED] himself suffers from any physical or mental condition that would make his adjustment to living in Argentina any more difficult that would normally be expected under the circumstances. The AAO notes that although the record contains a copy of a Medical Diagnostics report for Mr. [REDACTED] indicating he was in a car accident in August 2009, neither the applicant nor her husband address this accident and there is no suggestion in the record that he has any limitations or continues to receive medical treatment due to this accident. Therefore, the record does not show that relocating to Argentina would cause Mr. [REDACTED] hardship that would be extreme, unique, or atypical compared to other individuals in similar circumstances. *See Perez v. INS, supra.* Considering all of these factors cumulatively, the AAO finds that there is insufficient evidence to show that the hardship Mr. [REDACTED] would experience is extreme, going beyond those hardships ordinarily associated with inadmissibility.

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 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.