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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: APR 1 2 2013 Office: WASHINGTON FIELD OFFICE FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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,

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Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of the Democratic Republic of the Congo (the DRC) who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse.

The Field Office Director concluded that although the applicant had demonstrated that her qualifying spouse would suffer extreme hardship if he were to relocate to the DRC, she had failed to demonstrate that he would suffer extreme hardship if separated from the applicant. Therefore, the Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director*, dated June 28, 2012.

On appeal, counsel for the applicant asserts that the applicant did not previously present evidence regarding the hardship her qualifying spouse would suffer on separation because he would not remain in the United States without her but would instead accompany her to the DRC. However, counsel states that if he were to remain in the United States alone, the qualifying spouse would suffer extreme hardship. Counsel explains that the qualifying spouse has openly criticized the current government of the DRC and that he has received threats in response to his work, so he fears that the applicant would be subject to retaliation in the DRC because she is his spouse. Additionally, counsel states that the qualifying spouse suffers from anxiety and depression which have worsened in response to his stress over the possibility that the applicant will be forced to return to the DRC. Counsel further contends that the qualifying spouse would experience financial hardship if the applicant were removed because he would be unable to manage the household finances on his own. *Counsel's Brief.*

The record includes, but is not limited to: statements from the applicant and the qualifying spouse; letters from the applicant's father, the qualifying spouse's parents, and friends, coworkers, supervisors, and pastors of the applicant and the qualifying spouse; copies of threatening emails sent to the qualifying spouse's employer; information regarding the qualifying spouse's work and activism in the DRC; country conditions information; financial records; medical records; a police report regarding the applicant's suicide attempt; and two psychological evaluations regarding the qualifying spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

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.

In the present case, the record reflects that the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on which she had indicated that she had no children and that her father was living in Cameroon. However, the applicant had previously filed asylum applications on March 8, 2008 and June 24, 2008. She had claimed on one asylum application that she had a daughter, and she claimed on both applications that her father had been killed by Tutsi rebels. When confronted with the inconsistencies between her adjustment of status application and her asylum applications, the applicant stated that is her sister, not her daughter, and that her father is alive and residing in Cameroon. The applicant further stated that although she signed the asylum applications, she had not reviewed their contents and was not aware that they had been filed on her behalf. However, in an affidavit submitted in conjunction with her Form I-601, the applicant stated that she had noticed the incorrect information in her asylum applications prior to their filing and that the individual who helped her prepare the applications told her that without the false information, her case would be weak. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure an immigration benefit through fraud or misrepresentation. She does not contest this finding of inadmissibility on appeal. She is eligible to apply for a waiver under section 212(i) of the Act as the spouse of a U.S. citizen.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant herself can only be considered insofar as it causes extreme hardship to her qualifying spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (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. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or U.S. 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 v. I.N.S.*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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 qualifying spouse asserts that he would experience extreme hardship if the applicant's waiver application were denied. He explains that he would worry about the applicant's health and safety if she were forced to return to the DRC alone. He states that the applicant suffers from depression and that in February 2011 she attempted to commit suicide. He fears that "[h]er suicidal tendencies would get stronger" if she were alone in the DRC without his support and without mental health care. However, he also notes that it would be unsafe for him to relocate to the DRC with the applicant. He explains that he has been openly critical of the DRC government through his work with the and that he has received anonymous threats as a result, including a warning not to return to the DRC and an email mentioning personal information about the applicant. The qualifying spouse fears that he would be in danger in the DRC and that the applicant could also be subject to retaliation there due to her relationship with him. He states that he would "be wracked with guilt and anxiety over her own safety." He also fears that they would both be at risk of harm in the DRC because they are a mixed-race couple, which is in violation of the applicant's cultural norms.

He also contends that his emotional hardship over the applicant's departure would be compounded by the "acute psychological trauma" he has already suffered due to his work in the DRC. He states that he has experienced "severe panic attacks" on airplanes as a result of traumatic flying experiences in the DRC, that he suffers from chronic insomnia, and that he experiences anxiety attacks. He notes that he went to the emergency room on July 14, 2012 for "severe migraines, dizziness, debilitating weakness and tremors that appear to have been caused by the stress" of the applicant's immigration situation.

Additionally, the qualifying spouse states that he and the applicant have unsuccessfully tried to conceive a child and that they have sought medical treatment for infertility. He asserts that they would be unable to continue that process if the applicant were in the DRC and they would therefore be unable to have children, which is an important goal of theirs.

He also states that relocating to the DRC would cause hardship for him because he would be separated from his parents, who are aging, and his close friends. Additionally, he would be forced to quit his job, which is important to him, and he would likely be unable to find similar work or a comparable salary in the DRC. He also asserts that the applicant contributes to half the household income, so he would struggle to meet his financial obligations in her absence.

The record contains two psychological evaluations regarding the qualifying spouse, both of which indicate that he has been suffering from depression, anxiety, and related symptoms for at least two years. The first evaluation notes that when the applicant received an initial denial of

her immigration application, the qualifying spouse "noticed a dramatic change in his mood and behavior due to the stress that this had caused. He became excessively worried about the possibility of [the applicant] being deported and the emotional turmoil that would cause her." *See Psychological Evaluation,* *M.Psy.*, dated August 1, 2012. The evaluation also notes that the qualifying spouse experiences panic attacks when he is unable to contact the applicant due to his fear that she will attempt suicide again, "and that he could not imagine his emotional state if she were to be in another country and depressed." *Id.* Additionally, the evaluation indicates that when the applicant received the Field Office Director's denial, the qualifying spouse "became 'frozen in fear,' anxious, was unable to concentrate at work, angry, and lightheaded." *Id.* The qualifying spouse then decided that he must accompany the applicant to the DRC if she were deported, but doing so would "create intolerable depression and anxiety" for him due to concerns about "his own personal safety, but also the well-being of his wife who he knows copes with stress by becoming depressed and suicidal." *Id.* The evaluation states that in response to the applicant's stressful immigration situation, the qualifying spouse "is experiencing severe levels of anxiety and depression," more frequent panic attacks, and increased "insomnia, headaches, and depressive symptoms" including, but not limited to, sporadic thoughts of suicide and difficulty concentrating. *Id.* The qualifying spouse is also drinking alcohol on a daily basis to cope with stress, using Nyquil as a sleep aid, taking three prescription medications for depression and anxiety, and seeing a psychiatrist. *Id.*

The second psychological evaluation notes that the qualifying spouse has visited the psychiatrist on several occasions to treat "panic attacks, severe phobia and anxiety about flying, decreased concentration, trembling, light-headedness, insomnia and nightmares, headache progressing to migraine, [and] hyperventilation." *See Psychological Evaluation,* *M.D.*, dated August 15, 2012. The evaluation indicates that the symptoms are related to the qualifying spouse's "exposure to extreme violence and gruesomeness" in the DRC for his work, including being "repeatedly near combat and fire fights, and exposed to dead bodies resulting from these." *Id.* Additionally, the evaluation states that the qualifying spouse "was involved in a terrifying aircraft incident [in the DRC] where the pilot's window suddenly cracked and the aircraft went into free-fall . . . ." *Id.* A year prior to this incident, two of the qualifying spouse's colleagues were killed in airplane crashes in the DRC. The evaluation also notes that the qualifying spouse has received several death threats due to his pro-democracy work in the DRC. According to the evaluation, the qualifying spouse recently received emergency treatment for "a severe panic attack and a severe migraine attack" which had worsened over a period of two days. *Id.* "His symptoms currently are threatening his ability to work, both directly and also because of his decreased capacity for tolerating air travel." *Id.* Additionally, "[h]is psychiatric status has been further worsened by the threat to his relationship with his wife, stemming from her immigration status." *Id.* The psychiatrist states that if the qualifying spouse were separated from the applicant or forced to relocate with her to the DRC, he "would suffer extreme hardship of a psychiatric nature, threatening his health and functioning, given the escalating character of his psychiatric symptoms over the past two years and especially over the past several months." *Id.*

The AAO agrees with the Field Office Director's finding that the qualifying spouse would suffer extreme hardship if he relocated to the DRC. The record reflects that the qualifying spouse has regularly engaged in public criticism of the government of the DRC through his work at the NED. The record also contains copies of emails sent to the qualifying spouse's supervisor from anonymous individuals claiming to represent the NED's "partner organizations" in the DRC. Those emails contain threats against the qualifying spouse, complain about his work in the DRC, and warn him not to return to the country. The emails also identify the qualifying spouse's wife and mention her birthplace, indicating that the individuals making the threats have personal information about the qualifying spouse and his family. The U.S. Department of State indicates that political opponents and human rights advocates have been targeted for arbitrary arrest, detention, torture, and killing by state security forces in the DRC. *See U.S. Department of State, Country Reports on Human Rights Practices for 2011: Democratic Republic of the Congo.*

Additionally, the record reflects that the qualifying spouse suffers from severe anxiety and panic attacks related to his traumatic experiences in the DRC. The psychological evaluations in the record indicate that his symptoms would likely worsen and may become debilitating if he were to relocate to the DRC. The qualifying spouse also suffers panic attacks related to air travel, which would make relocation to the DRC extremely difficult. Furthermore, the qualifying spouse has lived in the United States for most of his life and has close ties with his family and friends in this country. Separation from them, especially in light of his mental health, would create significant hardship for him. Finally, the qualifying spouse is deeply involved in his work with the NED, where he has built a meaningful career as well as a stable income. Relocation to the DRC would force the qualifying spouse to abandon his career and his human rights activism, which are very important to him.

The AAO also finds that the qualifying spouse would suffer extreme hardship if he were separated from the applicant. The record reflects that the qualifying spouse is experiencing severe depression, anxiety, and panic attacks which have been exacerbated by his stress over the applicant's immigration situation and which would likely increase if she were removed. Both psychological evaluations indicate that the qualifying spouse's mental health has worsened significantly since the applicant received denials of her immigration applications and that he has required emergency medical attention for his severe panic-related symptoms. Additionally, his depression, anxiety, and panic attacks have interfered with his daily life, including his ability to work. He has experienced serious physical symptoms as a result of his increasing anxiety, has had thoughts of suicide, and has had to receive ongoing psychiatric care as well as treatment through prescription medications. If left alone in the United States, the record indicates his depression would likely worsen and he would suffer increased anxiety over the applicant's health and safety in the DRC, and he would have difficulty visiting the applicant on a regular basis due to his severe anxiety relating to air travel.

Additionally, the record reflects that the qualifying spouse has sought medical treatment for infertility, which demonstrates the importance of having children to him and the applicant. If the applicant were removed, they may be unable to receive fertility treatments or to have children.

When considered in the aggregate, the qualifying spouse's severe depression and anxiety with physical symptoms, his close ties to the United States, the risk to both the applicant and the qualifying spouse in the DRC, and the effect of separation on the couple's ability to have children would create extreme hardship for the qualifying spouse if the waiver application were denied. Therefore, the applicant has met her burden of establishing extreme hardship to her qualifying spouse as required by section 212(i) of the Act. *See Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996); *see also Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 566 (BIA 1999).

In that the applicant has established that the bars to her admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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 . . . 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).

Matter of Mendez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance 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 favorable factors in this case include the extreme hardship the qualifying spouse would suffer if the applicant's waiver application were denied; the risk to the applicant if she were to relocate to the DRC; the fact that the applicant has been gainfully employed through her own non-profit organization in the United States; her close ties to friends and the qualifying spouse's family in the United States; and her lack of a criminal record. Additionally, the record contains several letters of support from the applicant's friends, coworkers, professors, and pastors, who assert that the applicant is hard worker, a caring person, and a valuable member of her

community. The unfavorable factor is the applicant's attempt to obtain admission to the United States through fraud or misrepresentation.

Although the applicant's violation of immigration law cannot be condoned, the positive factors in this case outweigh the negative factor. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.