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Date: **APR 29 2013** Office: LOS ANGELES, CA FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the underlying waiver application remains denied.

The record reflects that the applicant is a native and citizen of Armenia 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 and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. The AAO dismissed the appeal, finding that although the applicant established that her husband would suffer extreme hardship if he relocated to Armenia, there was insufficient evidence in the record to show that he would suffer extreme hardship if he remained in the United States.

On appeal, counsel submits additional evidence of hardship and contends, among other things, that the applicant's husband would suffer extreme hardship if his wife's waiver application were denied, particularly considering the applicant has taken over complete responsibility for bookkeeping for the family's business and the couple now has a newborn baby.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, counsel has submitted a brief and additional new documentary evidence to support the applicant's waiver application. The applicant's submission meets the requirements of a motion to reopen and reconsider. Accordingly, the motion is granted.

In addition to the documents specified in the AAO's previous decision, the record also contains, *inter alia*: a copy of the birth certificate of the couple's U.S. citizen daughter; an updated declaration from the applicant; an updated declaration from the applicant's husband, Mr. [REDACTED] a declaration from Mr. [REDACTED]'s brother-in-law; a declaration from a tax preparer and a copy of a tax form; an article addressing women's rights in Armenia; and copies of photographs of the applicant and her family.

Section 212(a)(6)(C)(i) of the Act provides:

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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, and the applicant concedes, that she attempted to enter the United States in March 2002 using a fraudulent passport and visa which indicated she was a citizen of Russia. The record also reflects that during questioning by an immigration inspector, the applicant contended that she was the individual named on the passport, was a citizen of Russia, and that her secretary was responsible for obtaining the visa. It was only after additional questioning that she admitted to her true identity and that she had purchased the passport and visa. Therefore 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. Counsel does not contest this finding of inadmissibility.

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.

After a careful review of the entire record, the AAO finds that the applicant's husband, Mr. [REDACTED], will suffer extreme hardship if the applicant's waiver application were denied. The AAO previously found that if Mr. [REDACTED] relocated to Armenia to be with his wife, he would experience extreme hardship. The AAO will not disturb that finding. The AAO also finds that if Mr. [REDACTED] remains in the United States, he would suffer extreme hardship. An updated declaration from Mr. [REDACTED] explains that he owns two dry cleaning stores in two different locations and that his wife has taken over the bookkeeping aspect of his business. He states that his wife meets with their tax accountant, manages payments and invoices, helps with personnel, communicates with vendors, and uses the computer to handle all the paperwork, including for all of the transactions whether they are in cash, by credit card, or by check. According to Mr. [REDACTED] his wife does all of the

administrative work from home while also caring for their two young children. He also contends that the stores are open six days a week and that he is present at one of the stores at all times. A letter from the "principal" of the business corroborates the claim that the applicant is totally dedicated to the business, is an excellent bookkeeper for the business, and assists the business in numerous ways. A copy of a tax form in the record lists the applicant as the business' third-party designee. Therefore, the AAO acknowledges that if Mr. [REDACTED] remains in the United States, he would suffer not only the emotional hardship of separation, but his business would suffer a loss as well. In addition, as stated in the AAO's previous decision, the record shows that Mr. [REDACTED]'s father requires continuous home care due to multiple, serious medical conditions. Mr. [REDACTED]'s newly submitted declaration specifies that his wife takes his father to his doctor's appointments and cares for the couple's children so that he can stay with his father as needed. Furthermore, a new declaration from Mr. [REDACTED]'s brother-in-law contends that Mr. [REDACTED] became depressed after his divorce from his first wife. The brother-in-law contends that Mr. [REDACTED] would return to a life of anxiety and depression if separated from his wife. The record indicates that Mr. [REDACTED]'s father also suffers from anxiety and depression, and therefore, the record suggests a family history of mental health issues. The AAO acknowledges that if Mr. [REDACTED] remains in the United States, he would be a single parent to two young children who runs his own business in two locations while also helping to care for his father who has multiple, serious medical conditions. Considering the unique factors of this case cumulatively, the AAO finds that the hardship Mr. [REDACTED] would suffer if he remains in the United States is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that Mr. [REDACTED] faces extreme hardship if the applicant is refused admission.

In that the applicant has established that the bars to his 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).

See Matter of Mendez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, “[B]alance 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).

In this case, the AAO finds that the applicant does not warrant a favorable exercise of discretion. The applicant was ordered removed by an immigration judge on February 21, 2003. The removal order was not appealed to the Board of Immigration Appeals. By notice dated November 5, 2003, the applicant was ordered to appear for removal on December 3, 2003. The applicant failed to appear for removal and, instead, with the assistance of counsel, filed an application for stay of deportation, requesting to stay in the United States until June 3, 2004. The record shows that the applicant was instructed that her request for a stay would not be adjudicated until she surrendered herself and was given until December 11, 2003, to surrender herself. The applicant failed to surrender herself. Furthermore, by notice dated January 5, 2005, the applicant was ordered to appear for removal on February 1, 2005. The applicant failed to appear for removal. By notice dated April 5, 2005, the applicant was again ordered to appear for removal on May 9, 2005. The applicant again failed to appear for removal and continues to reside in the United States.

The applicant has failed to address these multiple acts of failing to abide by the immigration laws of the United States. Her initial attempt to enter the United States using a fraudulent passport and visa, combined with her continuous and numerous refusals to report to immigration authorities as instructed, is a significant negative factor in the case. Moreover, the applicant married her husband on October 14, 2007, after she was ordered removed. Therefore, any hardship suffered by her husband is given less weight. *See Garcia-Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991) (less weight is given to equities acquired after a deportation order has been entered); *Carnalla-Nunoz v. INS*, 627 F.2d 1004 (9th Cir. 1980) (after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998), need not be accorded great weight by the district director in considering discretionary weight); *see also Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992).

Under these circumstances, the AAO finds that the applicant does not warrant a favorable exercise of discretion. The adverse factors in the present case include the applicant’s misrepresentation of a material fact in order to procure an immigration benefit and the presence of additional significant violations of this country’s immigration laws spanning several years. The favorable and mitigating factors in the present case include the applicant’s family ties to the United States, including her U.S. citizen husband and two children, and the extreme hardship to the applicant’s family if she were refused admission.

The AAO finds that, when taken together, the favorable factors in the present case do not outweigh the significant adverse factors such that a favorable exercise of discretion is warranted. Accordingly, the underlying waiver application must be dismissed.

ORDER: The motion will be granted and the underlying waiver application remains denied.