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

U.S. Citizenship and Immigration Services

DATE: AUG 2 8 2013 OFFICE: SAN FERNANDO VALLEY File:

IN RE: Applicant:

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Fernando Valley, California, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Syria 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant is married to a U.S. citizen and 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.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Decision of the Field Office Director,* dated June 14, 2012.

On appeal counsel contends that the field office director erred in not taking administrative notice of and analyzing country conditions in Syria, and that if a waiver is not granted, the applicant's spouse will suffer extreme hardship. *See Counsel's Appeal Brief*, received July 16, 2012.

The record contains, but is not limited to: Form I-290B and counsel's appeal brief; various immigration applications and petitions; the applicant's spouse's hardship affidavit; the applicant's declaration; a psychological evaluation; financial, employment and tax-related records; marriage, divorce and birth records and family photos; and country conditions documents for Syria. The entire record was reviewed and considered in rendering this 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.

The record shows that the applicant entered the United States on September 8, 2004 and was admitted as a B-2 nonimmigrant by presenting a passport and visa not lawfully issued to him. On August 20, 2006 the applicant was placed into removal proceedings, which were terminated on January 28, 2010. Based on the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. He requires a waiver under section 212(i) of the Act.

A waiver of inadmissibility under sections 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. Hardship to the applicant and his children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only 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-Moralez,* 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-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.

The applicant's spouse is a 46-year-old native of Mexico and citizen of the United States who has been married to the applicant since August 2006. She has a 23-year-old son, and a 9-year-old daughter, whom the record indicates the applicant has been raising as his own. The applicant's spouse maintains that if a waiver is not granted, she will suffer extreme hardship of an emotional/psychological and economic nature. She expresses great fear for the safety of herself, her daughter and the applicant in Syria, noting that a family friend died in a recent bombing there, and her in-laws lost contact with her and the applicant for three months because they too were fleeing bombings. and diagnose the applicant's spouse with Major Depressive Disorder, Recurrent and Severe with Psychotic Features, and Generalized Anxiety Disorder. They write that the applicant's spouse's health is very fragile, has progressively declined due to her fears for the applicant's safety if he is removed to Syria, and that her symptoms are at risk of worsening, with the significant likelihood that these will lead to suicidal thoughts and ideations.

The applicant's spouse states that she is an American Christian woman, born and raised in Mexico, whose primary language is Spanish, does not speak or understand Arabic, has never resided in or even visited Syria, is wholly unfamiliar with the culture and country and has no ties thereto. Counsel refers to a number of reports on Syria which show that the country is currently in a state of significant civil upheaval marked by open conflict and widespread violence, and points out that the U.S. State Department issued an official Travel Warning to U.S. citizens on March 6, 2012, and that on March 29, 2012, the Department of Homeland Security authorized Temporary Protected Status (TPS) in the United States for eligible Syrian nationals. The AAO has considered these facts and has also reviewed the State Department's current *Syria Travel Warning*, dated March 1, 2013. Therein, U.S. citizens are warned against travel to Syria and those remaining in Syria are strongly advised to depart immediately. The warning notes that the security situation remains volatile and unpredictable as an armed conflict between government and anti-government armed groups continues throughout the country, with an increased risk of kidnappings, bombings, murder, and terrorism.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including her adjustment to an unfamiliar country in which she has never resided and does not speak or understand the language; her lengthy residence of approximately 19

years in the United States after growing up in Mexico; her lack of any ties to Syria; her close family and community ties to the United States; her lengthy steady employment in the United States with the same employer and the unlikelihood she would be able to secure employment in Syria; her stated economic, health-related, and safety concerns about Syria; her significant psychological conditions and the likely emotional/psychological impact of relocation, particularly in light of the current violent, dangerous and volatile conditions throughout Syria, the lack of infrastructure and access to adequate medical and psychological care there, and the fact that the U.S. Department of State has warned U.S. citizens not to travel to Syria and the Secretary of the Department of Homeland Security has authorized TPS for eligible Syrian nationals in the United States as a result of historically dangerous conditions therein. Considered in the aggregate, the AAO finds the evidence sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to Syria to be with the applicant.

Addressing separation, the applicant's spouse states that her wages are very low and she relies on the applicant's income, without which she would be unable to support herself and her daughter and meet their financial obligations. While the record contains a 2009 income tax return and W-2 form showing that the applicant's spouse earned $15,676, no documentary evidence has been submitted demonstrating the applicant's income or financial contribution to his household. The applicant's spouse indicates that she and the applicant send $200 monthly to support her mother in Mexico, anticipate that she will send $200 monthly to support the applicant in Syria because unemployment there is very high and wages very low, and that she will be unable to visit him in Syria because it will cost $5,000 per trip for her and her daughter. The record contains no documentary evidence to corroborate these assertions. While a few billing statements from 2010 have been submitted, there is no written budget or other documentary evidence demonstrating current expenses from which an accurate determination might be made as to the economic impact removal of the applicant would have on his spouse.

The applicant's spouse states that the applicant is the only father her daughter has ever known, is very emotionally close to him, and the two spend a great deal of time together daily. She indicates that separation-related hardship to her daughter would result in additional emotional hardship to herself. As detailed above, the record shows that the applicant's spouse has been diagnosed with Major Depressive Disorder, Recurrent and Severe with Psychotic Features, and Generalized Anxiety Disorder and that her health is very fragile and has progressively declined due to her fears about the applicant being removed to Syria. The record shows that the applicant's spouse's symptoms are at risk of worsening, with the significant likelihood that these will lead to suicidal thoughts and ideations.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse, including the permanent nature of the section 212(a)(6)(c)(i) bar, and the extreme emotional/psychological harm the applicant's spouse will experience due to concern about the applicant's well-being and safety in Syria, a concern that is beyond the common results of removal or inadmissibility. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship due to separation from the applicant.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

> We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra,* is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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).

Id. at 301.

The favorable factors in the present case include extreme hardship to the applicant's U.S. citizen spouse as a result of the applicant's inadmissibility; the applicant's significant family ties to the United States, particularly to his stepchildren whom he is raising as his own; and his apparent lack of any criminal record. The unfavorable factors are the applicant's immigration violations, which include his entry into the United States by presenting a passport and visa not lawfully issued to him, and his periods of unlawful presence and unauthorized employment in the United States. Although the applicant's violations of immigration law are significant and cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, pursuant to section 212(i) of the Act, the AAO finds that a favorable exercise of discretion is warranted

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.