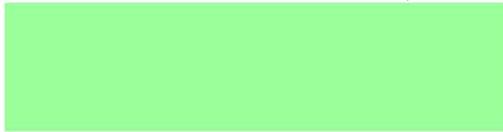


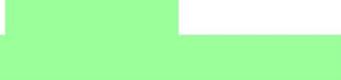


U.S. Citizenship  
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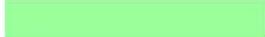
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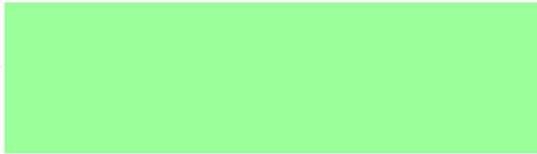
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**AUG 29 2013**

IN RE: 

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Argentina applying for adjustment of status under the Cuban Adjustment Act (CAA) 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 attempting to procure admission into the United States through willful misrepresentation of a material fact. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his lawful permanent resident spouse.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated March 15, 2013.

On appeal, the applicant asserts that the evidence establishes that his wife would suffer extreme hardship and the director's decision did not consider the totality of his spouse's hardship. Counsel also submits new evidence on appeal. *See Form I-290B, Notice of Appeal or Motion*, filed April 10, 2013, and *counsel's brief*.

The record contains, but is not limited to: counsel's briefs; various immigration forms and applications; statements by the applicant, the applicant's spouse, family, friends and employer; psychological evaluations of the applicant's spouse; letters from the applicant's spouse's physicians; financial documents; criminal records; passport and identification documents; country conditions reports; and photographs. 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 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 reflects that applicant married a lawful permanent resident of the United States in 2007 and filed for adjustment of status under the CAA thereafter. The record indicates that during the applicant's adjustment of status interview, the applicant's former spouse withdrew her petition and admitted in a sworn statement that she received money from the applicant to marry him and help him obtain permanent resident status. The field office director subsequently found that the applicant had entered into a marriage for the "primary purpose of circumventing the immigration laws of the United States." The AAO concurs that the applicant willfully misrepresented a

material fact to procure admission into the United and is inadmissible under section 212(a)(6)(C) of the Act. Counsel does not contest the inadmissibility.

Section 212(i) of the Act states:

- (1) The Attorney General [now Secretary, Department of Homeland Security, "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.

A waiver of inadmissibility under section 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant or the applicant's child can be considered only insofar as it results in hardship to a qualifying relative. In this 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-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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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).

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 (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 applicant’s spouse is a 48 year-old native of Cuba and lawful permanent resident of the United States since 2009. She states that the applicant is her soul mate and separating from him would be devastating. She reports that she suffers from major depression and anxiety. She notes that her depression has worsened due to the applicant’s immigration situation, causing her to have difficulty sleeping, poor concentration, crying spells, panic symptoms, passive suicidal thoughts, and excessive appetite. The applicant’s spouse indicates that although she has never acted on her suicidal ideations, sometimes she feels “better off dead.” She takes medication for her depression and anxiety as well as hypothyroidism. A report from a counselor states that since her hysterectomy in 2009, she has had hormonal imbalances that could not be treated with hormone replacement therapy due to her high risk of breast cancer, and as a result she has suffered mood swings and depression. A letter from her physician states that the applicant’s spouse has been taking hormones which causes mood changes. Her physician does not mention a risk of breast cancer. Her physician also diagnosed her with obesity and reports her weight gain of 40 pounds in six months, which counsel indicates began in June 2012. Counsel also reports that the applicant’s

spouse lost 20 pounds around the same time period due to the stress caused by the applicant's immigration situation. These apparent contradictions make it difficult to determine the extent of the applicant's spouse's medical conditions.

The applicant's spouse states that the applicant is her main source of emotional support. Her mother and siblings do not live in the United States, and her closest relatives are her aunt, uncle and cousins. She mentions that she has an extremely close relationship to the applicant's daughter who lives nearby and stays with the applicant and the applicant's spouse on the weekends.

The applicant's spouse also indicates that the applicant is the primary income earner of their household. They own a house with the applicant's name on the deed and have various household expenses together, as the evidence corroborates. The applicant's spouse works as a realtor, and she and her employer indicate that her productivity has declined due to recent issues of forgetfulness and distractedness. However, the applicant's spouse also mentions that she has seen some improvement in her work and is just beginning to make progress. The applicant and his spouse's 2012 tax forms corroborate her assertions, showing that the applicant's spouse earned \$27,191, significantly more than the applicant's business income of \$7,516.

The AAO has considered cumulatively all assertions and evidence of separation-related hardship to the applicant's spouse, including her stated mental health issues, her medical conditions, her financial responsibilities, and the emotional strain of being separated from the applicant. Considered in the aggregate, the AAO finds that the evidence is not sufficient to demonstrate that the applicant's lawful permanent resident wife would suffer extreme hardship due to separation from the applicant.

The applicant's spouse states that she cannot relocate to Argentina to be with the applicant because she would lose her home, any sources of income, her relationship with her step-daughter, and family and community support which has helped her with her depression and anxiety. Counsel also indicates that she is unfamiliar with the customs and culture of Argentina. There is no evidence in the record that the applicant or his wife would be unable to find employment in Argentina. Nor does the record reflect that her contact with her step-daughter would be severed or that she could not adapt to living in Argentina. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant's spouse worries that she would not have the same level of medical and mental health treatment as she does in the United States. Country condition reports indicate that there are inadequate facilities and resources in "some" mental institutions but do not indicate a scarcity of adequate mental health or medical resources in Argentina.

(b)(6)

*NON-PRECEDENT DECISION*

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Given the evidence in record and stated assertions of relocation-related hardship, the AAO does not find that taken cumulatively, the applicant's spouse would suffer extreme hardship were she to relocate to Argentina to be with the applicant.

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. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.