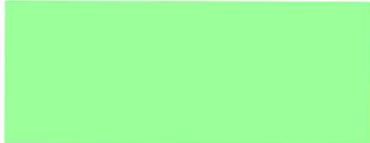




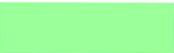
U.S. Citizenship
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Services

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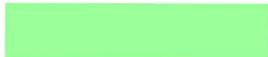


DATE: **AUG 30 2013**

OFFICE: BALTIMORE, MARYLAND

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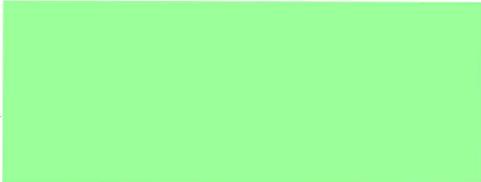
IN RE:

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)

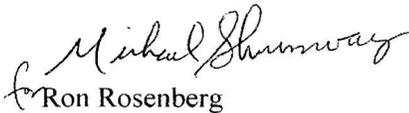
ON BEHALF OF APPLICANT:



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 District Director, Baltimore, Maryland, 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 [REDACTED] who was found 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 district 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 District Director*, dated September 19, 2011.

On appeal counsel contends that if a waiver is not granted, the applicant's U.S. citizen spouse will suffer extreme hardship. *See Notice of Appeal or Motion* (Form I-290B), received October 19, 2011.

The record contains, but is not limited to: Form I-290B and counsel's statement thereon; counsel's rebuttal to the notice of intent to deny the waiver application; various immigration applications and petitions; a hardship affidavit; the applicant's affidavit; a psychological evaluation; financial records; country conditions information; documents related to the applicant's exclusion and removal proceedings; and documents related to the applicant's detention, and order of supervision. 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 without inspection on September 4, 1991 after being smuggled on a boat. From 1991 to 1997, the applicant filed five separate asylum applications bearing discrepant names, dates and manners of entry into the United States, marital statuses, spouse and children information, and markedly different accounts of the persecution he claimed to have suffered in [REDACTED]. As a result of significant name variations, at least four different alien numbers were assigned to the applicant. As the district director noted, while counsel blames interpreters for the variations on the applicant's name, interpreters cannot be blamed for the markedly different claims of persecution. 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

concur 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-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*, 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 42-year-old native of [REDACTED] and citizen of the United States. While the couple has no children together, the applicant's spouse has a 21-year-old daughter and a 10-year-old son whom she indicates the applicant has been raising as his own. The applicant's spouse states that she and the applicant were acquaintances in [REDACTED] she sometimes saw him in [REDACTED] due to work but did not have much interaction with him, and then in 2007 after relocating to [REDACTED] following her divorce, she was happy to see an old acquaintance from [REDACTED]. They struck up a conversation, the applicant shared his desire to start a restaurant and the two embarked on the undertaking together. The applicant's spouse explains that while their restaurant is registered in her name alone, this is due to the applicant's tenuous immigration status and they actually purchased it together and share in all the responsibilities. She indicates that the applicant became a good friend, cared for and treated her and her children well, and after some time the relationship became romantic. The applicant's spouse describes a very difficult relationship with her former husband, a gambling addict who left her severely distressed and contemplating suicide. She states that the applicant respects her, cares for her, and loves her children who also love him and think of him as the only father they have ever known. The applicant's spouse indicates that when she learned the applicant could be removed, she was unable to breathe, could not sleep, and began to suffer headaches and severe depression. She explains that she still does not sleep well at night and cries every time she thinks of losing the applicant. [REDACTED] Ph.D., explains that the applicant's spouse has become dependent on the applicant for both instrumental support and love. Dr. [REDACTED] diagnoses her with Major Depressive Disorder, noting that this is a serious mental illness that causes significant distress or impairment in social, occupational, or other areas of functioning. Dr. [REDACTED] also diagnoses the applicant's spouse with Anxiety Disorder NOS, and notes that her prognosis is dependent on her active engagement in treatment and strong social and family support, adding that the applicant plays an irreplaceable role in his spouse's wellbeing. Dr. [REDACTED] states that the applicant's spouse's condition will further deteriorate beyond any doubt if she loses the applicant. Dr. [REDACTED] recommends that she have weekly supportive psychotherapy and consider

antidepressant medications. As noted by the district director, the record contains no documentary evidence showing that the applicant's spouse has engaged in therapy following this consultation.

The applicant's spouse states that, to her, the applicant is like a walking stick to a blind person. Without him she does not know how to run their family business, deal with the maintenance of their house and property, and what to do with the care and education of the children. She explains that in addition to their business, they own their home together where they live on the second floor above the restaurant. The applicant's spouse explains that it is an old building which has required many repairs, renovations and ongoing maintenance, all performed by the applicant. She adds that he also does all the driving as she does not have a license. The applicant's spouse states that she could not operate the business without the applicant. She is merely the cashier while the applicant is the restaurant's manager and cook. He oversees all operations, runs the kitchen, sets the menus, creates the dishes, deals with the vendors, and is in charge of food delivery. The applicant's spouse fears that in the applicant's absence, she would suffer significant economic hardship resulting in the loss of both their restaurant and home. She indicates that while the applicant works tirelessly in all his essential roles for the modest salary of only \$1,000 per month, in his absence she would be forced to hire at least two people, a cook and a manager, at significantly higher salaries. The applicant's spouse states that her income is about \$2,500 per month, which would be substantially reduced by having to hire new employees to replace the applicant. As her expenses are more than \$3,000 monthly and are currently shared with the applicant, his removal would result in a substantial and ongoing financial loss. Corroborating documentary evidence has been submitted. The applicant's spouse indicates that the applicant would be unable to secure employment in [REDACTED] after residing more than 20 years in United States, and even if he is able to find work in a restaurant he would not earn enough to support himself and support her and the children. She fears instead, that she would have to send money to [REDACTED] to support the applicant, resulting in even greater economic hardship. Country conditions documents submitted for the record confirms that wages in [REDACTED] are generally lower than in the United States.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse, including the emotional, psychological and physical impacts of separation; her significant diagnosed psychological conditions and finding by a psychologist that the applicant plays an irreplaceable role in her wellbeing; the impact of losing the business she started in 2007 with the applicant on whom she depends as manager and cook; and the economic impact of losing the applicant's income and having to replace him at significantly higher cost, further reducing her income and ability to meet her financial obligations. While none of these factors individually rise to the level of extreme hardship, when considered in the aggregate, the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship due to separation from the applicant.

Addressing relocation, the applicant's spouse indicates that she has resided for more than a decade in the United States where she enjoys close family ties to her two U.S. citizen children, and where her parents are intending immigrants with approved I-130 petitions. She explains that it would be devastating to leave her parents alone in the United States after waiting so many years for them to join her. The applicant's spouse indicates that she would also lose the close community ties, business and customer ties she has built over more than a decade in the United States. She

explains that relocation would result in the loss of her family home and the restaurant business she started with the applicant in 2007. The applicant's spouse describes the hard work that went into repairing and renovating an old building into the home and restaurant they have today and where they continue working hard to earn a living and pay their taxes. She states that her 10-year-old son was born and raised in the United States and would have great difficulty adjusting to life in [REDACTED] where though he can understand [REDACTED], he would be unable to speak, read, or write the language. The applicant's spouse adds that her 21-year-old daughter, though born in [REDACTED] has only a third grade education there and her [REDACTED] is at a third grade level. She indicates that the hardship of watching her children suffer in [REDACTED] would result in extreme hardship to her, as would leaving her young adult daughter behind in the United States after never being separated before. The applicant's spouse maintains that as U.S. citizens, she and her children would enjoy no social, medical or educational benefits in [REDACTED] and would have to pay a very high price for schools and medical benefits. She adds that the standard of living and wages in general are much higher in the United States than [REDACTED] and she submits corroborating country conditions reports.

The applicant's spouse states that she is suffering from a mental disorder and is able to pay for her treatment because of the income she earns in the United States, whereas in [REDACTED] she would not earn enough to do so. It is noted that no documentary evidence has been submitted to show that the applicant has undergone any psychological treatment in [REDACTED] where she resides, only that she was evaluated on a single occasion by a psychologist in [REDACTED]. Nevertheless, the AAO has taken into consideration Dr. [REDACTED] assertion that the applicant's spouse will not receive adequate treatment in [REDACTED] where mental illness is still stigmatized and the care for the mentally ill is poor and often inappropriate. The applicant's spouse asserts that she would be subjected to sterilization and a heavy fine for having violated [REDACTED] one child policy. While the AAO recognizes that such practices occur in [REDACTED] the human rights report submitted for the record indicates that enforcement of the policy varied significantly from region to region. For instance, the one-child limit was more strictly applied in urban areas, whereas in most rural areas the policy was more relaxed. Nevertheless, this factor too has been considered in the aggregate with all other hardship assertions.

The applicant's spouse contends that if she retains her U.S. citizenship, she would be unable to reside permanently in [REDACTED]. Counsel asserts that if the applicant's spouse and children relocate, the [REDACTED] government would not consider them [REDACTED] citizens unless they renounce their U.S. citizenship. The applicant's spouse indicates that she does not wish to renounce her U.S. citizenship and the rights and privileges that come with it. The AAO acknowledges that some countries do not recognize dual citizenship, but the applicant has not demonstrated that there are no legal means through his spouse may reside there permanently. Despite counsel's assertion to the contrary, the applicant has not demonstrated that a U.S. citizen forfeits U.S. citizenship simply by relocating to [REDACTED]. Nevertheless, the AAO recognizes that as a U.S. citizen in [REDACTED] the applicant's spouse may not enjoy all the benefits available to [REDACTED] citizens and may be required to obtain visas or permits of various kinds.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including her adjustment to a country in which she has not resided for approximately 12 years and her lengthy residence in the United States of the same duration; her

close family ties to the United States, particularly to her two children – one a minor, the other a young adult, and to her parents who after many years are intending immigrants with approved relative petitions; her close community, business and customer ties to the United States; her property, home and business ownership in the United States; her significant psychological condition and stated concerns that she will be unable to obtain adequate treatment in [REDACTED] her stated employment and economic concerns; her concerns about maintaining her U.S. citizenship and yet being permitted to live and work permanently in [REDACTED] and the difficulties this might entail; her concerns for her children having to adjust to life in [REDACTED] where her son would be unable to speak, read or write the language, her daughter would do so at only a third grade level, and the resulting hardship this would cause to her; and her stated concerns regarding [REDACTED] one-child policy and the possibility that she could face heavy fines or sterilization. While none of these factors individually rise to the level of extreme hardship, considered in the aggregate, the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to [REDACTED] to be with 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:

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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 in the United States, particularly to his spouse and her children whom he is raising as his own; the applicant's community and business ties to the United States; his home and business ownership; and his payment of taxes. The unfavorable factors are the applicant's immigration violations, which include making multiple misrepresentations on a variety of immigration applications, his failure to appear for at least two immigration court hearings in the 1990s, and his periods of unlawful presence and unauthorized employment. 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, 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.