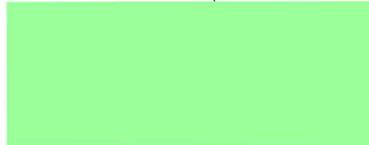




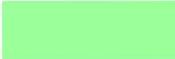
**U.S. Citizenship  
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Services**

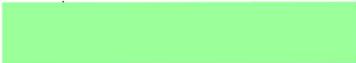
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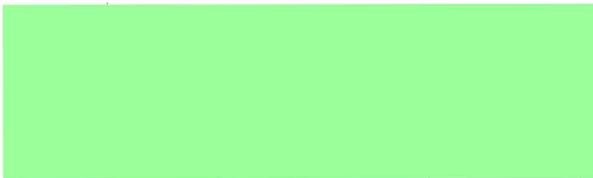
Office: PHILADELPHIA

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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 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,

  
for

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Philadelphia, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Ukraine 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 procuring a U.S. visa by fraud or misrepresentation. She is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant does not contest this finding of inadmissibility and is seeking a waiver of inadmissibility in order to reside with her husband in the United States.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director*, January 20, 2012.

On appeal, counsel for the applicant contends that the field office director erred in not considering all the evidence submitted and thus in finding no extreme hardship, and submits four briefs<sup>1</sup> focusing on the qualifying relative's medical and psychological problems. The record also includes documentation supporting two Form I-130 petitions, an application for waiver of inadmissibility, and an application for adjustment of status, including, but not limited to: tax returns; hardship statements; job letters; psychological evaluations and counseling progress notes; medical records, including medication prescribed; birth and marriage certificates; copies of passports, a visa, and entry stamps; and country condition information. The entire record was reviewed and considered in rendering this decision.

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

- (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)(1) of the Act provides:

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 [...].

The record reflects that the applicant told a consular officer during her nonimmigrant visa interview that she was married in order to enhance her prospects of receiving a visa, and was issued a five-year

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<sup>1</sup> The record contains counsel's initial appeal brief and three amended briefs dated, respectively, February 17, 2012, April 25, 2012, September 24, 2012, and November 26, 2012.

validity, multiple entry, B1/B2 visa on September 21, 2005. She admits intentionally misrepresenting her marital status to get a visa. Entering the country in B-1 status on October 12, 2005, she was admitted for three months and later changed to F1 student status, and she has not departed the United States since her October 2005 entry. On February 3, 2009, she married the petitioner, her qualifying relative herein.

A waiver of inadmissibility under section 212(i) 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 or her child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband is the only qualifying relative in this case. 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 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. INS.*, 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.

Regarding hardship from relocation, counsel for the applicant contends that moving to Ukraine would impose extreme hardship on the applicant’s husband. Official U.S. government reporting regarding crime and medical care substantiates this claim. The U.S. Department of State (DOS) has advised that U.S. citizens with health problems not visit the country:

If you are ill or infirm, we strongly recommend that you not travel to Ukraine. Ukraine is not a disabled-friendly environment, with little or no accommodations to ease access. Elderly travelers and those with existing health problems may be at risk due to inadequate medical facilities. Ambulance service is inadequate and it can take hours to get a response even in an emergency. Ambulance crews have asked for bribes before agreeing to transport critically ill patients to the hospital. [...]. A few facilities have only limited English speakers, and most have none at all. No hospitals in Ukraine accept U.S. health insurance plans for payment, and the level of medical care is not equal to that found in U.S. hospitals. (Some facilities are adequate for basic services.) If you are hospitalized, you, or your friends and family, must supply bandages, medication, and food. [...]. If you do not have Ukrainian medical insurance, you may be asked to pay in cash for medical services and hospitalization before you are treated.

*Ukraine—Country Specific Information*, DOS, June 6, 2012.

Although recognizing that the country is generally safe, in that there is little anti-U.S. sentiment, DOS warns that:

Street crime remains a serious problem in Ukraine. The country continues to undergo significant economic, political, and social transformation, and income differences have grown accordingly. As a result, you and other foreign visitors may be perceived

as wealthy and as easy targets, for criminals. United States citizens often stand out in Ukraine, and are therefore more likely to be targeted than in Western European countries, where incomes are higher and U.S. citizens may blend in better.

*Id.*, DOS, June 6, 2012.

The record reflects that the applicant's husband has several significant medical problems: his Type 2 (non-insulin dependent) diabetes diagnosed over a decade ago has worsened, requiring him to take insulin on occasion to control his blood sugar, and he contracted osteomyelitis and cellulitis, causing him to have a toe amputated. He suffers from hemochromatosis, a blood condition which has required him to receive specialized treatment three times per year for many years, as well as depression and anxiety. Extensive documentation substantiates the qualifying relative's claims that his health issues are increasing with age, he has occasionally visited hospital emergency rooms for acute care due to problems complying with treatment plans, he is receiving both psychotherapy and pharmaceutical treatment, and he has received a good prognosis for his illnesses if he complies with prescribed regimens. Official recognition of problems in Ukraine establishes that moving there would go beyond mere inconvenience and the usual or typical results of removal or inadmissibility. Evidence supports counsel's contention that the qualifying relative would have difficulty accessing medical care in Ukraine due to cost and/or unavailability.

The record reflects that the qualifying relative would have difficulty obtaining prescriptions needed to treat his chronic problems in Ukraine. He does not speak the local language, and English is not widely spoken in Ukraine. He has no ties to the country, but has spent his entire life in the Philadelphia area where he has extensive ties, ranging from professional contacts, friends, and a family network including four children from a prior marriage and several grandchildren. The AAO thus concludes that, were the applicant unable to reside in the United States due to her inadmissibility, the record shows that a qualifying relative would suffer extreme hardship by relocating abroad.

Regarding separation, the applicant's husband contends that the prospect of his wife's absence has caused him emotional, physical, and financial hardship, and that these would worsen if she were unable to remain in the United States. The record reflects that he is undergoing outpatient treatment at a psychiatric clinic as a result of being tested and diagnosed with major depression. His psychotherapist reports that he is responding to treatment, which includes both weekly counseling and medication, but notes that his reported symptoms – psychomotor agitation, loss of appetite, lack of activity enjoyment – have increased due to stresses associated with the applicant's immigration problems. *See Psychological Report*, November 16, 2011. The therapist's progress notes further indicate that stress and anxiety are negatively affecting his ability to manage his diabetes. The psychologist recommends that he continue on prescribed medications, as well as with psychotherapy, and notes that the applicant's support is important to his compliance with treatment. The record reflects that one or more of the qualifying relative's grown children live with him and the applicant, and that the applicant has grown particularly close to another daughter and her children.

Regarding financial hardship, a 2011 tax return and financial documentation establish that while the applicant's husband earns about 75% of household income, his wife's 25% contribution is essential to meeting monthly expenses. There is no documentation concerning the applicant's potential living

expenses in Ukraine, but official U.S. reporting suggests that she would encounter a problematic economy:

The economy contracted nearly 15% in 2009, among the worst economic performances in the world. [...] In August 2010, Ukraine [...] reached a new agreement with the IMF for a \$15.1 billion Stand-By Agreement to put the country on the path to fiscal sustainability, reform the gas sector, and shore up the country's banking system. Economic growth resumed in 2010 and 2011, buoyed by exports. After initial disbursements, the IMF program stalled in early 2011 due to the Ukrainian Government's lack of progress in implementing key gas sector reforms, namely gas tariff increases.

*Ukraine—The World Factbook*, U.S. Central Intelligence Agency, December 31, 2012.

The record contains evidence that, besides imposing a financial burden on her husband, the applicant's absence would remove from him the care and support that have allowed him to continue working as an automobile mechanic, despite his ailments. The record contains his therapist's view that, without the applicant, he is at risk of depression-caused worsening of his Type 2 diabetes into the more serious Type 1 form of the disease and, along with it, medical problems that will adversely affect his ability to function in the workplace. The record establishes that the situation of the applicant's husband, if he remains in the United States without his wife, is not typical of individuals separated as a result of inadmissibility and thus rises beyond mere inconvenience to the level of extreme hardship based on the record.

Review of the documentation on record, when considered in its totality, reflects the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien 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-Morales*, 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 matter are the extreme hardships the applicant's husband would face if the applicant were to reside in Ukraine, regardless of whether he accompanied the applicant or remained here; the applicant's lack of any criminal record; and passage of more than seven years since the applicant's misrepresentation to obtain a visa. The only unfavorable factors in this matter are the misrepresentation and the applicant's failure to depart after her authorized period of admission expired.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violations of immigration law, the AAO finds that a favorable exercise of discretion is warranted.

In proceedings 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 met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained and the waiver granted.