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[Redacted]

DATE: **FEB 20 2013**

Office: NEW YORK, NY

FILE: [Redacted]

IN RE:

[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Section 212(i) of the Immigration and Nationality 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.

Thank you,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Haiti 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 having attempted to procure admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his lawful permanent resident parents.

The District Director concluded that the applicant had failed to demonstrate extreme hardship to his parents and denied the application accordingly. *See Decision of District Director*, dated December 29, 2011.

On appeal, counsel for the applicant asserts that the District Director failed to consider the hardship the applicant's parents would experience if they were to remain in the United States without the applicant. Counsel states that the applicant's parents are elderly and that they need the applicant's assistance due to health problems. Counsel also contends that the applicant's parents would be unable to relocate to Haiti due to their health and the conditions in that country. *Counsel's Brief*.

The record includes, but is not limited to: statements from the applicant's parents; medical records; country conditions information; a psychological evaluation; a statement from the applicant's girlfriend; and letters of recommendation for the applicant. 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:

- (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) of the Act provides:

- (1) 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.

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In the present case, the record reflects that the applicant entered the United States with a fraudulent passport on September 16, 1990. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. He does not contest this finding of inadmissibility on appeal. He is eligible to apply for a waiver under section 212(i) of the Act as the son of lawful permanent residents.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant himself or to his U.S. citizen child can only be considered insofar as it causes extreme hardship to his parents. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 of Immigration Appeals (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 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).

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 v. I.N.S.*, 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.

The applicant’s parents state that they are elderly and that they depend on the applicant. The applicant’s mother indicates that she has several health problems, including a history of breast cancer and mastectomy, high blood pressure, high cholesterol, cramps, dizziness, and memory problems. She contends that she experiences significant pain due to her medical problems and past surgery. She explains that the applicant takes her to doctor’s appointments, cares for her when she is not feeling well, and assists her with daily tasks. The applicant’s father indicates that he requires regular medical care due to his age and that the applicant takes him to his appointments. He also states that his ability to carry out daily tasks is very limited so he needs the applicant’s help. The applicant’s parents also contend that they would be unable to relocate to Haiti, where medical care and general living conditions are very poor, due to their age and health problems.

The AAO finds that the applicant’s parents would suffer extreme hardship if they were separated from the applicant. Medical documentation in the record confirms that the applicant’s mother has been diagnosed with several serious health conditions for which she requires regular medical care and that his father attends regular checkups. The records indicate that the applicant takes his parents to their doctor’s appointments, interprets for them at those appointments due to their limited English ability, and assists in their care. Additionally, a psychological evaluation in the record notes that the applicant’s father, who is now 79 years old, has increasing difficulty performing basic household tasks and therefore relies on the applicant for assistance. The

evaluation also indicates that the applicant's father suffers from depression and suicidal ideation in response to the possibility that the applicant will be forced to return to Haiti.

The AAO also finds that the applicant's parents would suffer extreme hardship if they were to relocate to Haiti. The U.S. Department of State indicates that medical facilities in Haiti are very poor and that infrastructure in the country "remains in poor condition and unable to fully support even normal activity." See *U.S. Department of State, Travel Warning: Haiti*, dated December 28, 2012. Living safely in Haiti would be very difficult for the applicant's parents in light of their age and health conditions.

When considered in the aggregate, the applicant's parents' age, serious health conditions, and need for daily assistance from the applicant would create extreme hardship for them if he were removed to Haiti. Therefore, the applicant has established that his lawful permanent resident parents would face extreme hardship if the applicant's waiver request were denied. See *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996); see also *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 566 (BIA 1999).

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).

Matter of Mendez, 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).

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The favorable factors in this case include the extreme hardship the applicant's parents would suffer if the waiver application were denied; the fact that the applicant has other close family ties in the United States, including a young U.S. citizen daughter; and his long residence in the United States. The unfavorable factor is the applicant's use of a false passport to enter the United States.

Although the applicant's violation of immigration law is serious and cannot be condoned, the positive factors in this case outweigh the negative factor. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.¹

ORDER: The appeal is sustained.

¹ The AAO notes that the applicant will also need an approved Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, in order to adjust his status to that of a lawful permanent resident. The record reflects that the applicant first entered the United States with a fraudulent passport on September 16, 1990. At the conclusion of immigration court proceedings, he was excluded and deported to Haiti on April 19, 1991. He then reentered the United States without inspection on November 25, 1991, before his period of inadmissibility had ended. The applicant is therefore inadmissible under Section 212(a)(9)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(i).