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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUL 15 2013 OFFICE: ST. PAUL (BLOOMINGTON), MN 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
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, St. Paul Field Office, Bloomington, Minnesota, 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 Somalia 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The record indicates that the applicant is married to a U.S. citizen. She 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 with her spouse and children.

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 November 26, 2012.

On appeal, counsel contends that if the waiver is not granted, the applicant's spouse will suffer extreme hardship. *See Form I-290B, Notice of Appeal or Motion,* dated December 28, 2012 (Form I-290B).

The record contains, but is not limited to: Form I-290B; counsel's legal memorandum in support of appeal; various immigration applications and petitions; hardship affidavits; the applicant's affidavit; letters of character reference, support and concern; medical records; financial records; child support-related records; TPS-related records; country conditions materials for Somalia; and marriage, birth and divorce records. 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 on May 26, 2000, the applicant attempted to enter the United States by presenting a Dutch passport bearing the name , an identity not her own. The applicant was detained and processed for expedited removal before applying for asylum on August 26, 2001. An immigration judge administratively closed her asylum application on January 31, 2002, and the applicant was granted temporary protective status (TPS). The record shows that during the applicant's July 10, 2012 adjustment of status interview, she presented another Dutch passport bearing the name which she testified to having purchased from a handler in Based upon the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act. 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.

Section 212(i) of the Act provides, in pertinent part:

> (1) The Attorney General [now the Secretary 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 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 child 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 record reflects that the applicant's spouse is a 48-year-old native of Somalia and citizen of the United States. While he and the applicant have no children together, the applicant's spouse has four children from a prior marriage, the youngest a minor born in 2000. The applicant's spouse indicates that he works long hours as a self-employed truck driver transporting fresh and frozen food items long distances. He states that he takes prescription medications for high cholesterol and began seeing a counselor on December 21, 2012 to discuss his feelings and obtain a letter documenting the stress he has related to the applicant's immigration situation and battle with cancer.[1] The applicant's spouse explains that he would be overwhelmed with stress and anxiety if the applicant is removed to Somalia where her life would be in serious danger. He states that Somalia is an extremely violent and dangerous country, and the applicant would not have access there to the medical care she requires after having been diagnosed with breast cancer. Medical records confirm that the applicant has a strong family history of breast cancer, and she was diagnosed with the disease in January 2012. The applicant underwent treatment for breast cancer and requires annual mammograms and regular follow-up appointments to deter recurrence and

[1] The AAO notes that no such letter has been submitted on appeal.

ensure early treatment in that event. A World Health Organization document submitted for the record indicates that: "Access to, and quality of health care in Somalia remains inadequate to meet the needs of the population. In addition, health services are unequally distributed, with vast areas completely deprived of basic health care. There are only 39 qualified doctors per one million inhabitants, mainly concentrated in urban areas . . . ." The applicant's spouse indicates that he took significant time off work to care for the applicant before, during and after her surgery and during the two-month period of daily radiation therapy that followed. He states that seeing the applicant, who had always been the one on whom he depended for everything, in such a weak condition changed his relationship with her and made him fear that he would lose her. The applicant's spouse indicates that he has suffered frequent panic attacks and feelings of overwhelming stress related to the applicant's struggle with breast cancer and the possibility of her removal to Somalia. He explains that being permanently separated from her would emotionally and physically devastate him, as the applicant would lack access to necessary medical care and be at risk of danger in a violent country in the midst of a civil war, and this would cause him extreme hardship.

The applicant's spouse indicates that he would be unable to protect, care for, or even visit the applicant in Somalia as his passport is being withheld by the U.S. State Department as a result of his significant child-support arrearages. He explains that his current outstanding balance is over $29,000, which is more than double his adjusted gross income for tax year 2011. The record includes corroborating documentary evidence concerning his late child-support obligations. While the applicant's spouse makes monthly child-support payments of $782, he describes this as an ongoing financial struggle and notes that it would be virtually impossible to "just pay off" the debt to obtain his passport, as suggested by the Field Office Director. The applicant's spouse states that the removal of the applicant would result in his extreme economic hardship and a reduction in two-thirds of their household income, making it impossible to meet even his basic monthly obligations like food, shelter and car insurance. The applicant submits a written budget as well as supporting tax and financial documentation to corroborate these claims. The applicant's spouse indicates that he lost approximately $12,000 in income while caring for the applicant during her breast cancer treatment in 2012 and that they continue to struggle to recover from this substantial deficit.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse, including the substantial economic impact of separation and the significant emotional impact of knowing of the life-threatening danger to which the applicant would be subjected in Somalia. The AAO notes that on May 1, 2012, USCIS announced a re-designation for TPS until at least March 17, 2014. Additionally, the applicant's spouse would be unable to accompany the applicant to Somalia, where she would not have access to the medical care she requires. The AAO has additionally considered the permanent nature of separation given the section 212(a)(6)(c)(i) bar. 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.

Addressing the hardship that he would experience upon relocation, the applicant's spouse indicates that while he is a native of Somalia, he has not resided in or visited his homeland since

1987. The applicant's spouse explains that for more than 25 years, he has resided solely in the United States where he has established his own business and enjoys close community and family ties, particularly to his four children. He states that his step-sister, is his only close family member in Somalia. resides in and has told the applicant's spouse that there are no roads and people must walk miles "to get their daily needs." Her husband was killed by terrorists when he refused to pay them protection money. Moreover, the applicant's spouse also states that other sources inform him that fake medicine distributed in Somalia has caused many deaths. The applicant's spouse expresses great fear of relocating to Somalia, noting that U.S. citizens are singled out and targeted for kidnapping and death. Country conditions documents submitted for the record corroborate the applicant's spouse's assertions. Additionally, the U.S. State Department's current *Somalia Travel Warning*, dated June 21, 2013, urges U.S. citizens to "avoid all travel to Somalia." The State Department warns that "[t]he security situation inside Somalia remains unstable and dangerous. Terrorist operatives and armed groups in Somalia have demonstrated their intent to attack . . . non-military targets. Kidnapping, bombings, murder, illegal roadblocks, banditry, and other violent incidents and threats to U.S. citizens and other foreigners can occur in any region." The report also mentions 's February 2012 announcement that it merged with and notes that ' -planned assassinations, suicide bombings, and indiscriminate armed attacks in civilian populated areas are frequent in Somalia." After discussing instances of U.S. citizens being kidnapped, the State Department notes that "strong familiarity with Somalia and/or extensive prior travel to the region does not reduce travel risk."

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including his adjustment to a country in which he has not resided since 1987; his residence in the United States for more than 25 years; his close community and family ties in the United States, particularly to his four children, one of whom is still a minor; his business ownership in the United States and commitment to paying child support; the significant economic impact of relocation, including the loss of his business and means of paying his substantial ongoing financial obligations; his medical conditions and reliance on prescription medication; the applicant's significant medical conditions, including breast cancer, for which she will require treatment that will likely be unavailable in Somalia, causing her spouse extreme emotional hardship; his stated safety, economic, and health concerns regarding Somalia, which are corroborated by the record; and the permanent nature of relocation in light of the section 212(a)(6)(c)(i) bar. 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 he to relocate to Somalia 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:

> 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 and community ties to the United States as demonstrated by attestations by others to her good moral character and essential presence in the community; her employment and payment of taxes; and her apparent lack of any criminal record outside of her immigration violations. The unfavorable factors are the applicant's immigration violations, which include the presentation of a passport not

her own in an attempt to enter 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.