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



U.S. Citizenship  
and Immigration  
Services

Date: JUN 20 2013

Office: ATLANTA

FILE: [REDACTED]

IN RE :

Applicant: [REDACTED]

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,

*Ron Rosenberg*

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Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Atlanta, Georgia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

The applicant is a native and citizen of Canada 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 procuring admission to the United States through fraud or misrepresentation. The field office director found that the applicant procured admission to the United States in April 2001 after stating to an immigration inspector that he intended to visit, when he really intended to reside and work in the United States. The applicant has not since departed the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with his U.S. citizen spouse.

The field office director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated March 8, 2012.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that the Service erred by not waiving the remaining 11 days of the applicant's foreign residency requirement of his J-1 Exchange Visitor Visa and by not finding extreme hardship to his spouse. Counsel further asserts the applicant's prior representative offered ineffective counsel by not submitting documentation or a foreign residency waiver request. With the appeal counsel submits a brief; a social assessment of the applicant's spouse; statements from the applicant's spouse and the spouse's father and mother; financial documentation; school information for the applicant's son; educational information for the applicant's spouse; medical documentation for the applicant's daughter, spouse, and spouse's father; and educational information about Canada. 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 that:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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....

Prior to addressing whether the applicant qualifies for a waiver, the AAO will consider the issues related to the applicant's inadmissibility. The field office director found that applicant entered the United States in April 2001 by presenting a Canadian passport and stating that he intended to visit the United States, but has not departed since that time. The field office director also found that in December 2000 the applicant had been denied entry as a North American Free Trade Agreement (NAFTA) Professional in TN status because his profession as a medical doctor is not covered under the agreement. Based on the applicant's entry in 2001 the field office director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States as a visitor through fraud or misrepresentation when he intended to remain in the United States and work as a medical doctor.

The issue becomes whether the applicant's actions constitute a willful misrepresentation of a material fact that would render him inadmissible under section 212(a)(6)(C)(i) of the Act. In a sworn statement in support of his application for adjustment of status the applicant claims that at the time he entered the United States he was living in Toronto, Canada, and was traveling with his ex-wife. The applicant states that when asked by an immigration inspector the purpose of his trip he replied that it was to visit and he was then permitted entry. The applicant states he had visited the United States multiple times prior to this entry and had no intention of remaining. He states that he had packed for a one-week visit, had retained his fully-furnished apartment in Toronto with all his personal belongings, and intended to return. Previous counsel for the applicant stated in a brief that the applicant did not intend to make a misrepresentation as he did not enter with immigrant intent, had made multiple prior entries to the United States from Canada, and did not file an adjustment of status application until 10 years following this entry. Neither counsel nor the applicant has offered explanation, beyond that the applicant had intended a one-week visit, of any circumstances causing a change in the applicant's intentions during the one week subsequent to his entry, particularly in light of the fact that he sought a TN visa in order to work in the United States as a physician. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In absence of evidence to overcome the finding of misrepresentation the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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. The applicant's spouse 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-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. *Salcido-Salcido v. INS*, 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.

Counsel asserts that the applicant and his spouse provide a home for their family as well as the spouse's mother and a niece and nephew and that the applicant is the sole support since the spouse's stress level has caused her to resign her employment. Counsel also contends the applicant's children have special needs. Counsel asserts that if the applicant relocates to Canada it would cause financial disaster as he would be unable to work for one year while getting further required education.

The applicant's spouse states she needs the applicant's support as she cares for her parents. She asserts that the emotional stress of his immigration situation has caused her anxiety and loss of weight and also forced her to resign from her job as a registered nurse because she could not focus. She states she takes psychotropic medications to ameliorate symptoms but her stress is also impacting her ability to be a parent. She states that the family is dependent on the applicant's income and health insurance and that she would be unable to support her family as well as her parents and sister's children without him. She states that she plans to complete a Bachelor of Nursing degree, but needs the applicant's financial and emotional support to achieve her goals. She asserts that the applicant is very close to their children and losing him would be devastating to them. She states their daughter has Torticollis requiring physical therapy and her son's speech and social development are behind and he requires special attention. The applicant's spouse states that her mother lives with them as she is unemployed and Social Security benefits do not meet her monthly needs, and because she has diabetes and high blood pressure requiring medication but has no medical insurance. The applicant's spouse states that she currently cares for her sister's two children because the sister is unable to do so. She states that her father also plans to live with her due to health problems for which his doctor advises he not live alone and because his own home is in foreclosure. She further states that when she and the applicant relocated for the applicant's employment they were unable to sell their home while purchasing another, went into debt, and were forced into bankruptcy, resulting in high debt payments plus a mortgage.

The applicant's spouse states that if they relocated to Canada they would have no relatives to help them and the applicant would need another year of schooling at minimal salary to be licensed to practice medicine. She further asserts her parents would be displaced by her move and her sister's children could not go because of custody issues.

The spouse's mother states that due to her health and limited income she is unable to support herself, so she resides with the applicant and his spouse. She also states that another daughter suffers depression, so her two children stay with the applicant and his spouse for long periods of time. The spouse's father states that he is unable to care for himself due to medical problems and is facing foreclosure on his home, so he also will be living with the applicant and his spouse.

A Social and Functional Assessment of the applicant's spouse states that she experiences significant stress coping with the threat of the applicant's departure and her obligations to her children with

special needs while caring for her mother and preparing to care for her father. The assessment states that due to stress the spouse suffers a lack of focus impacting her work and parenting, an inability to sleep, weight loss, anxiety, and a loss of appetite. The assessment states the applicant's spouse has been prescribed medication to treat stress. The assessment states that the applicant's spouse fears being unable to earn enough to support the family, fears the impact of the applicant's separation on her children, and worries about financial disaster if the family relocates to Canada. The assessment states that the spouse fears if she relocates she will be unable to finish her studies. It further states that the applicant's spouse wants more children, but as she experienced a miscarriage between the births of her two children she credits her current doctor with the second child's birth.

The AAO finds that the record establishes that the applicant's qualifying spouse would suffer extreme hardship if she were to remain in the United States while the applicant resides abroad. The record shows that the applicant's spouse is emotionally and financially reliant on the applicant as she cares for her own immediate family's needs as well as those of other family members while dealing with substantial financial obligations. The resulting stress has caused anxiety, a loss of weight, and an inability to sleep, and caused her to resign from her vocation due to an inability to focus. When considered in the aggregate, the statements and documentation provided regarding the qualifying spouse's emotional and financial hardships demonstrate that she would suffer extreme hardship if she were to remain in the United States without the applicant.

The AAO also finds the record to establish that the applicant's spouse would experience extreme hardship if she were to relocate to Canada to reside with the applicant. The record establishes that the applicant's U.S. citizen spouse was born in the United States and has no ties to Canada. She would have to leave her family, most notably her parents and a niece and nephew who are dependent on her, be concerned about her financial well-being, and possibly be unable to pursue her educational and career goals. It has thus been established that the applicant's spouse would suffer extreme hardship if she were to relocate abroad to reside with the applicant due to his inadmissibility.

Considered in the aggregate, the applicant has established that his spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 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.

In *Matter of Mendez-Morales*, 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 BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the hardships the applicant's United States citizen spouse and children would face if the applicant is not granted this waiver, the applicant's support from the qualifying spouse and her family in the United States, his gainful employment, the passage of more than 10 years since the applicant's misrepresentation at entry to the United States, and his apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's misrepresentation at entry to the United States.

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 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.

**ORDER:** The appeal is sustained.