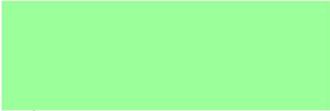




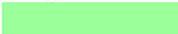
U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **MAR 05 2013**

Office: CINCINNATI

FILE: 

IN RE:

Applicant: 

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:

SELF-REPRESENTED

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.

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-190B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Moldova who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or willful misrepresentation of a material fact. The applicant is the wife of a U.S. citizen. The applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182 (i), in order to remain in the United States with her U.S. citizen spouse.

The field office director concluded that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of his inadmissibility and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the applicant asserts that the applicant did not willfully misrepresent a material fact to a consular officer and on her adjustment of status interview. The applicant asserts that, were the AAO to find the applicant inadmissible, the director erred in finding that the applicant has not established extreme hardship to her spouse, as the evidence outlining psychological, emotional and financial difficulties demonstrates extreme hardship to the applicant's qualifying relative.

The record includes, but is not limited to: the applicant's brief; the applicant's declaration; the applicant's husband statement; statements by the applicant's husband's immediate family members and friends; country conditions documentation; a psychological evaluation; medical documentation; unpublished AAO decisions; prescription records; copies of divorce decrees and judgments; a marriage certificate; and school records.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a 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 Supreme Court in *Kungys v. United States*, 485 U.S. 759 (1988), found that the test of whether concealments or misrepresentations were "material" was whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, United States Citizenship and Immigration Services (USCIS) decisions. In addition, in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961), the Board of Immigration Appeals (Board) found that a misrepresentation made in connection with an application for visa or other documents is material if either: (a) the alien is excludable on the true facts, or (b) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and

which might well have resulted in proper determination that he be excluded. *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (AG 1961). The requirement of willfulness under section 212(a)(6)(C) of the Act is satisfied if it is established that the alien had knowledge of the falsity of his statement when made. *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979). Proof of intent to deceive is not necessary, and knowledge of the falsity of the misrepresentation is sufficient. See *Forbes v. INS*, 48 F.3d 439 (9th Cir. 1995).

The record shows that on July 6, 2010, the applicant appeared for a nonimmigrant visa interview with a consular officer in which she stated her desire to enter the United States to visit two wedding guests who were friends of her first husband. The applicant then stated during her adjustment of status interview that the alleged guests did not attend her wedding and were not friends of her first husband.

The record further reflects that when the applicant entered the United States on July 20, 2010, pursuant to her nonimmigrant visa, she explained to the immigration inspector that the purpose of her visit was to celebrate her honeymoon and that her then-husband would be joining her within one week. In fact, the record evidence indicates that the applicant had been married to her then-husband for two years, and had been separated from him for over a year when she entered the United States on July 20. The record also indicates that the applicant divorced her first husband four months after entering the United States to marry [REDACTED], the applicant's petitioner and qualifying relative. Additionally, there is evidence in the record suggesting that when the applicant entered the United States on July 20, 2010, she was accompanied by [REDACTED].

Additionally, the record indicates that on April 4, 2011, the applicant was interviewed at the Cincinnati Field Office in connection with her Form I-485, adjustment of status application. During the interview, the applicant stated that her first husband and [REDACTED] were friends who knew each other before she ever met [REDACTED]. The applicant further stated that their friendship was developed through a fantasy football league. However, [REDACTED] was also interviewed by an officer at the Cincinnati Field Office and he stated that his only connection to the applicant's first husband was through email for the purpose of arranging the legalities of the divorce between the applicant and her then-husband.

On appeal, the applicant states that it was not her intention to marry [REDACTED] when she entered the United States on July 20, 2010. She contends that the field office director's conclusion that she intended to reside permanently in the United States when she was admitted as a nonimmigrant is incorrect. The applicant concedes on appeal that [REDACTED] flew to the United States on July 20, 2010 with her, but states that she "had no intention to lie or misrepresent at the time of the interview in Cincinnati and at the airport." Here, the AAO finds that the record demonstrates the applicant misrepresented the nature of her relationship with her first husband and [REDACTED] in an attempt to obtain a nonimmigrant visa and gain admission into the United States. By stating to the consular officer that she intended to enter the United States to visit two of her first-husband's friends, and by stating to an immigration inspector that the purpose of her visit to the United States was to celebrate her honeymoon when, in truth, she had been separated from her first-husband for over a year before her attempted entry, the applicant cut off a line of inquiry that was relevant to her request for a nonimmigrant visa. Specifically, the applicant cut off a line of inquiry which might have resulted in a denial of her May 2010 nonimmigrant visa application and

subsequent admission under section 214(b) of the Act, 8 U.S.C. § 1184(b). In that the applicant willfully misrepresented material facts regarding her relationship with her spouse in obtaining entry into the United States in 2010 and lawful permanent residence in 2011, she is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

- (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 immigrant 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 or other family members can be considered only insofar as it results in hardship to a 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). Here, the record reflects that the applicant is the spouse of a U.S. citizen who has an approved Form I-130, Petition for Alien Relative, which was filed on the applicant's behalf. The applicant's U.S. citizen husband therefore meets the definition of a qualifying relative.

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 the 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 is 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 AAO now turns to the issue of whether the applicant has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

The record reflects that the applicant’s qualifying relative, [REDACTED] is a native and citizen of the United States. [REDACTED] and his first wife have a nine-year-old son, [REDACTED] who is a U.S. citizen by birth. Their divorce decree indicates that custody of this child is to be shared between the two parents. [REDACTED] son spends half of the month living with his mother and the other half living with him and the applicant. The divorce decree indicates that the applicant’s husband was ordered to pay \$1,000 a month in child support. In her affidavit, the applicant’s former wife indicates that the applicant’s husband is a responsible father and that he has never missed a child support payment.

In an undated affidavit submitted on appeal, the applicant’s husband states that the applicant has given him peace and has helped him correct “the years of neglect [his] son faced due to an unhealthy marriage.” The record evidence reflects that the applicant’s son was performing poorly in school

and showed behavioral problems both at home and in school. However, the applicant's husband states that the applicant has assisted in helping his son with his reading and writing and has provided stability to his school studies. He further indicates that the applicant prepares a weekly test for the applicant's son and continually monitors his development in school.

The applicant's husband indicates that he is "torn-apart" with the prospect of having to choose between relocating with his wife to Moldova if her application is denied or remaining in the United States with his son and traveling to Moldova to visit the applicant. He further indicates that he has endured many tragedies in his life and that he has finally found happiness by living with his son and the applicant. Here, the AAO notes that the Board's decision in *Matter of Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. Therefore, the most important single factor may be family separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Beunfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

The applicant asserts on appeal that her husband's psychological health prevents him from living in Moldova or living in the United States without the applicant. She asserts that her husband's psychological hardships have proven to be severe and have exacerbated due to her immigration problems. To support the applicant's claims with respect to the psychological hardships her husband is experiencing as a result of her inadmissibility, she submitted a psychological evaluation of her husband's mental state. The report, prepared by [REDACTED], and dated January 5, 2012, indicates that the applicant's husband developed Major Depressive Disorder and Chronic Anxiety as a direct result of his fear of becoming separated from the applicant. The applicant's husband presents symptoms of insomnia, weight gain, fatigue and loss of energy, feelings of worthlessness, and a depressed mood. [REDACTED] concludes that "because [the applicant's husband's] symptoms will be rooted in the reality experiences of the separation itself, it will be difficult to ameliorate those symptoms with medication and/or supportive psychotherapy." Additionally, [REDACTED] mentions that when the applicant's husband was three years of age, his father was hit and killed by a drunk driver. The applicant's husband was raised by his mother, and he stated to [REDACTED] that he does not want to relocate to Moldova and abandon his son precisely because of his own experience of growing up without a father. The psychological assessment demonstrates that the applicant's husband is currently experiencing a psychological illness caused by the prospect of separation from the applicant. The AAO therefore finds the psychological evaluation is sufficient to demonstrate psychological hardship to the applicant's qualifying relative.

The record evidence reflects that the applicant's husband's immediate family members, relatives, and friends all reside in Dayton, Ohio, where he was raised and currently resides. As previously stated, the applicant's husband's son lives with him for half of the month, and it is stated that to separate his son from him would cause a great disruption in their lives. The applicant states that relocation to Moldova would signify separation from his family and friends. The applicant's husband further states in his undated declaration that it would be nearly impossible to visit his family as round-trip travel tickets from Moldova to the United States average \$1,750 and, in a country where the average income of its citizens is \$243 a month, it would be impossible for him to travel to visit his family. Here, the AAO notes that country conditions evidence in the record indicate that Moldova is one of the poorest countries in Europe with an average monthly salary of \$243 a month.

Were the applicant's husband to relocate to Moldova, he would have to face the prospect of finding employment with a salary sufficient to support his household and comply with the Ohio state court's order requiring him to pay \$1,000 a month in child support to his son. From the documents provided, the AAO acknowledges that the applicant's husband would experience financial difficulties as a result of relocation to Moldova in the event the applicant is denied admission to the United States. Moreover, he would have to leave behind the operation and management of his contracting business to family members.

In an affidavit dated May 1, 2011, the applicant's husband's mother states that she has a loving and stable relationship with her son. She indicates that the applicant's husband's father died when he was only three years old, and that she raised all of her children by herself. The record evidence reflects that the applicant's husband and her mother have a close relationship, that she lives "only 10 minutes from her son's home," and that the applicant's husband visits her "almost every day." The applicant's husband's mother indicates that her family is her life and she cannot endure losing any of them. She states that she cannot be happy without her son, the applicant, and her grandson in the United States with her. Here, the AAO notes that relocation to Moldova would result in emotional hardship to the applicant's husband given the applicant's husband's current psychological state and because separation from his immediate family members will result in emotional loss.

Therefore, the record reflects that the applicant's husband has been residing Dayton, Ohio all his life, suggesting relocation would require significant adjustment. The applicant's spouse would have to leave his community, the business he owns and his profession as a plumber, the psychologist familiar with his diagnosis and treatment, and his family, including his mother and a nine-year-old son from a prior relationship. He would experience concern for his son's well-being and progress in school, particularly because of his father's absence in his own upbringing. In addition, there is evidence in the record indicating that the applicant's husband is particularly close with his mother. The applicant's husband likely would not be able to maintain his current standard of living, and it is unclear whether he would be able to fulfill his child support obligations. Furthermore, the country conditions information reflect poor economic conditions and safety issues in Moldova. The record evidence also indicates that the applicant's husband is experiencing Major Depressive Disorder and Chronic Anxiety as a direct result of the prospect of separation from the applicant. Finally, the record evidence indicates that the applicant has been a positive influence in the life of the applicant's husband's son, given her background and experience in education and her efforts at improving his school performance.

Accordingly, the record evidence, when considered in its totality, reflects that the applicant has established on appeal that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Moreover, it has been established that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to Moldova to reside with the applicant. Consequently, 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.

The favorable factors in this matter are the extreme hardship the applicant's husband would face if the applicant were to reside in Moldova, regardless of whether he accompanied the applicant or stayed in the United States; the difficulties the applicant's husband's son would face in the event of separation from the applicant; the applicant's apparent lack of a criminal record; and support letters from the applicant's husband's family, friends, and community members. The unfavorable factors in this matter are the applicant's periods of unlawful presence and willful misrepresentations while in the United States.

It is noted that the immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of discretion is warranted.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the applicant's appeal is sustained.

**ORDER:** The appeal is sustained.