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



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **MAR 09 2013** Office: MIAMI, FLORIDA

[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.

If you believe the law was inappropriately applied by us 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. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Miami, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Venezuela 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 seeking to procure admission into the United States, a visa, other documentation, or other benefits under the Act by willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside in the United States with her lawful permanent resident spouse.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated June 14, 2010.

On appeal, the applicant asserts that her spouse would suffer extreme hardship if she were not granted a waiver of inadmissibility.

The record contains, but is not limited to, statements from the applicant, the applicant's current spouse and former spouse, divorce records, and various immigration applications and decisions. 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.

In the present case, the record indicates that the applicant was previously married to a U.S. citizen, who filed a Form I-130 Petition for Alien Relative (Form I-1#0) on her behalf. On April 6, 2009 the petition was denied after an interview with a USCIS officer who determined that the applicant and the petitioner did not enter into a bona fide marriage, and instead wed for the purpose of circumventing the immigration laws of the United States. The applicant is now seeking a waiver of inadmissibility based on her Form I-485 Application to Register Permanent Residence or Adjustment of Status (Form I-485), filed on June 29, 2009, pursuant to the Cuban Adjustment Act (Public Law 89-732, November 2, 1966, as Amended) (CAA).

The Field Office Director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act, as she sought to obtain a benefit under the Act through willful misrepresentation of a material fact. The Field Office Director observed that the applicant's prior marriage was determined to be a "sham," as it was entered into for the purpose of evading the immigration laws of the United States. In her response to the Notice of Intent to Deny the Form I-130, the applicant indicated that although there were inconsistencies during the second interview, they

entered into a genuine marriage and lived as husband and wife during the application/interview process. The rebuttal information was found insufficient to overcome the USCIS' initial findings and the petition was subsequently denied. The record reflects that the applicant offered inconsistent information on material issues regarding prior her marriage and has failed to provide sufficient explanation for the inconsistencies. The AAO concurs with the Field Office Director's finding that the applicant is inadmissible under 212(a)(6)(C)(i) of the Act.

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

- (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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a demonstration that barring admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully permanent resident spouse or parent of the applicant. Hardship to the applicant and her children 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 the 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 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 applicant's spouse indicates that he would suffer extreme hardship if he were separated from the applicant because she has helped him recover emotionally, and financially. The applicant's spouse states that the applicant has given him a better place to live so that he can now improve his relationship with his son. The applicant's spouse also indicates that the applicant assists him with finances and he would not be able to pay his child support obligations along with other expenses without the applicant's assistance. The applicant's spouse further indicates that he could not relocate to Venezuela with the applicant because after living in Cuba he would not want to live under another communist regime. The applicant's spouse also indicates that he believes the employment prospects would be poor in Venezuela.

The applicant's counsel indicates that the applicant has assisted her spouse recover from drug addictions and it would be an extreme hardship for his recovery if he were separated from the applicant during this time.

The applicant has provided insufficient evidence to demonstrate that her spouse would suffer extreme hardship were they to live separately due to her inadmissibility from the United States. The applicant's spouse indicates that he would suffer financially based on their separation because he would be unable to meet all of his financial obligations. However, although some financial documents were offered in each of their names for such things as an apartment lease, car payments, insurance and utility bills, there is insufficient evidence of income and expenses to determine what the financial impact would be if the applicant were to return to Venezuela without her spouse. In addition, although the applicant's spouse indicates that he has an additional burden to pay child support for the care of his children, and would face difficulty in providing these payments without her assistance, there is insufficient evidence to establish the degree of hardship he would suffer in meeting this obligation if separated from the applicant. And while the applicant's son currently lives in the household with the applicant and her spouse, no evidence was provided to indicate this child would remain in the United States with her spouse, if the applicant were required to return to Venezuela. The applicant through counsel also indicates that she has assisted her spouse in his recovery from addictions, but there has been no further evidence offered to support this assertion. Therefore, the level of hardship her spouse might experience related to this issue is unclear. Based on the totality of the evidence presented, the applicant has not demonstrated extreme hardship to the her spouse due to separation.

The applicant also did not sufficiently demonstrate that relocation would cause an extreme hardship to her spouse. The applicant's spouse indicates that because he has already lived under a communist regime he fears living in Venezuela. However, according to country condition information, Venezuela maintains a long standing federal republic identity, with a democratically elected government¹. Although it is noted that various restrictive limitations have been placed on perceived opponents of the current government, the applicant offered no specific information detailing how her spouse would experience hardship based on his fear of communist governments if he were to relocate with her to Venezuela. In his statement, the applicant's spouse offers little detail regarding particular fears he might have with living under the government in Venezuela other than indicating a general concern about communism. Here, the applicant has presented insufficient evidence to support a finding that her spouse would experience hardship on relocation based on any possible political issues. Moreover, while the applicant's spouse also states that he fears the employment situation would not be promising in Venezuela if he were to relocate, the applicant provided insufficient information or documentary evidence to substantiate this statement. The applicant did not offer any specific reasons her spouse would be unable to obtain suitable employment in Venezuela or why she would not be able to obtain employment to assist with the finances. Therefore, the AAO finds that based on

¹ C.I.A. World Factbook, January 22, 2013. The Venezuelan governments have been democratically elected since 1959.

the evidence presented, the applicant has not demonstrated extreme hardship to her spouse due to relocation.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application 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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.