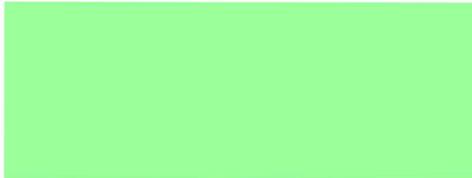


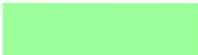


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Date: **MAR 20 2013**

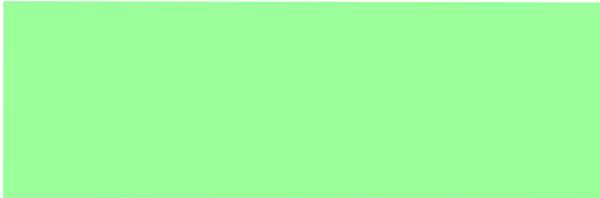
Office: TEGUCIGALPA

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) and 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
Acting Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Costa Rica who entered the United States without authorization in 2004 and did not depart the United States until 2006. In addition, the record establishes that when the applicant subsequently applied for a nonimmigrant visa in 2007 and 2008, he failed to disclose his previous unauthorized entry and stay in the United States. The applicant was thus found to be inadmissible to the United States pursuant to sections 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. The applicant does not contest these findings of inadmissibility. Rather, he seeks a waiver of inadmissibility to reside in the United States with his U.S. citizen spouse and children.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 3, 2012.

On appeal, counsel for the applicant submits the following: a brief; letters from the applicant's spouse; medical documentation pertaining to the applicant's spouse and child, [REDACTED] and financial and academic documentation pertaining to the applicant's spouse and children. In addition, supplemental documentation in support of the applicant's appeal was received by the AAO in November 2012. The entire record was reviewed and considered in rendering this decision.

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.

....

- (ii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) 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

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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.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien...

Waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act are 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 U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or the children 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).

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 U.S. citizen spouse asserts that she will suffer emotional and financial hardship were she to remain in the United States while the applicant continues to reside abroad due to his

inadmissibility. To begin, counsel explains that both the applicant's spouse and child are suffering from mood disorders as a result of long-term separation from the applicant. In addition, counsel maintains that although the applicant's spouse is employed, she has had to move in with her father to make ends meet and as a result of her financial hardship, she is not able to travel to Costa Rica often to see her husband. *Memorandum on Appeal*, dated July 20, 2012.

With respect to the emotional hardship referenced, the record contains documentation establishing that the applicant's spouse is being treated for depression and anxiety related to the multiple stressors in her life, including her husband's absence and finances. Said documentation further establishes that the applicant's spouse is participating in therapy services and medication management with a psychiatrist. *See Letter from [REDACTED] LCSW-C, [REDACTED]*, dated September 20, 2012. In addition, documentation that the applicant's spouse has been prescribed Zoloft, an antidepressant, has been submitted by counsel. Moreover, a letter has been provided from the applicant's daughter's therapist, [REDACTED] LCSW-C. [REDACTED] confirms that the applicant's daughter, currently six years old, is receiving therapy once a week to work on behavioral issues and assist her in identifying feelings and building coping skills. Ms. [REDACTED] notes that the absence of her father is causing a strain on the family and continues to inhibit potential progress that the child could make in treatment. *See Letter from [REDACTED] LCSW-C, [REDACTED]* dated November 29, 2012. Evidence in the record establishes that the applicant's daughter was diagnosed with depression in 2011 based on her father's long-term absence. *See Letter from [REDACTED] M.D., Clinic Psychiatrist, [REDACTED]* dated July 26, 2011. Further, numerous letters in support have been provided from the applicant's spouse's family and friends detailing the hardship the applicant's spouse is experiencing as a result of being primary caregiver and provider to her two children. Evidence has also been provided establishing the extensive absences from school the children have experienced, and the negative effects of said absences, to be able to spend time with their father in Costa Rica. *See Attendance History and Letter from [REDACTED] Kindergarten Teacher, [REDACTED]* dated June 8, 2012.

As for the financial hardship referenced, although the record establishes that the applicant's spouse is gainfully employed as an individual home care provider, she makes only approximately \$400 per week and has had to move in with her father to make ends meet. *See Letter from [REDACTED]*. The record further details the financial contributions the applicant's spouse is making to help her husband in Costa Rica. The record reflects that the cumulative effect of the emotional and financial hardship the applicant's spouse would experience due to the applicant's inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, the applicant's spouse would suffer extreme hardship if she remains in the United States.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. To begin, counsel notes that the applicant's spouse and children were born in the United States and have no ties to Costa Rica. In addition, counsel explains that the applicant's spouse and children are unfamiliar with the country, culture, customs and language. As a result, the applicant's spouse

would not be able to obtain gainful employment to support herself and her children. Moreover, counsel details that the applicant's children are fully vested in their education and a relocation abroad would cause them to experience a regression in their education and social development. *Supra* at 8-11.

The record establishes that the applicant's children are fully integrated into the United States lifestyle and educational system. The Board of Immigration Appeals (BIA) found that a fifteen-year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the applicant's children at this stage of their education and social development and relocate to Costa Rica would constitute extreme hardship to him, and by extension, to the applicant's spouse, the only qualifying relative in this case. In addition, the record reflects that the applicant's spouse was born and raised in the United States. Were she to relocate to Costa Rica to reside with the applicant, she would be relocating to a country with which she is not familiar. She would have to leave her extended family, her friends, her community, her gainful employment, and the medical providers familiar with her and her daughter's mental health needs and treatment plan. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen wife would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, 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

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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. (Citations omitted).

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and children would face if the applicant were to remain in Costa Rica, regardless of whether they accompanied the applicant or stayed in the United States, the applicant's community ties, support letters and the apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's unlawful entry and presence in the United States and his fraud or willful misrepresentation, as outlined above.

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 his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the I-601 waiver application approved.

ORDER: The appeal is sustained. The waiver application is approved.