(b)(6)

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

[redacted]

Date: MAY 2 2 2013 Office: SAN FRANCISCO, CA FILE: [redacted]

IN RE: [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), and section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Francisco, California. 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 Israel who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured entry into the United States by fraud or willful misrepresentation and section 212(a)(9)(B)(i)(II) of 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 seeking readmission within 10 years of his last departure from the United States. The record indicates that the applicant is the spouse of a United States citizen. The applicant seeks a waiver of inadmissibility to reside in the United States with his wife.

In a decision dated August 31, 2011, the field office director found that the applicant had not established that extreme hardship would be imposed on his U.S. citizen spouse as a result of his inadmissibility. The waiver application was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated September 29, 2011, counsel states that the field office director erred in misapplying section 212(i) of the Act. Counsel also states that the field office director improperly concluded that the applicant's U.S. citizen wife would not suffer extreme hardship as a result of his inadmissibility as well as made other erroneous conclusions of law and fact.

The record of hardship includes: a statement from the applicant's spouse; medical documentation for the applicant, his spouse, and his spouse's parents; financial documentation; and country conditions information. The entire record was reviewed and considered in rendering this decision on 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.

During his adjustment interview on January 10, 2011, the applicant attested to having misrepresented numerous facts about his past in order to obtain a B-2 visitor's visa. Specifically, the applicant failed to disclose his previous marriage to a U.S. citizen, previous and current Alien Relative Petitions filed on his behalf, his criminal record, and his seven years of unlawful residence in the United States.

The AAO finds that but for the applicant's criminal record, which does not affect his admissibility, the applicant's failure to disclose the above facts on his Form DS-156 were

material misrepresentations under 212(a)(6)(C)(i) of the Act. Thus, the applicant is inadmissible under 212(a)(6)(C)(i) of the Act.

We note that on April 16, 2004, the applicant pled nolo contendere to a charge under Florida Statutes 796.07(2)(f) as a second degree misdemeanor, with a maximum possible penalty of 60 days in jail. We find that if this conviction were found to be a crime involving moral turpitude, it would qualify for the "petty offense" exception, thus inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is not at issue in the applicant's case and his failure to disclose this conviction is not material.

However, the applicant is also inadmissible under section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States.

Section 212(a)(9)of the Act provides:

> (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.

In the present case, the record reflects that the applicant entered the United States on a B-2 visitor's visa with an authorized period of stay until December 2, 2001. The applicant did not depart the United States until August 2007. The applicant is therefore inadmissible under section 212(a)(9)(B)(i) of the Act for having been unlawfully present in the United States from December 2001 to August 2007 and seeking readmission within 10 years of his last departure.

The applicant is eligible to apply for waivers of his inadmissibilities under sections 212(i) and 212(a)(9)(B)(v) 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 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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

A waiver of inadmissibility under section 212(i) or 212(a)(9)(B)(v) 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 can be considered only insofar as it results in hardship to a qualifying relative. 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. See *Salcido-Salcido v. I.N.S.*, 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.

The applicant's spouse states that she has a long history of suffering from bipolar disorder, including having suicidal ideations and a history of self-injurious behavior. The applicant's spouse states that she has been taking Lithium Orotate for six years to help manage her bipolar symptoms. She states that because of her mental illness having a stable environment and supportive husband and family is essential to her well-being. The applicant's spouse states further that the applicant's immigration situation is causing her to have an increased level of depression and anxiety. She states that exacerbating her situation is her physical health as she suffers from the effects of Lyme disease. She states that she also helps care for her parents who both suffer from mental health and financial problems. The applicant's spouse states that she is so fearful of the applicant's immigration situation and the instability it may cause that she chose to have an abortion in 2010. The applicant's spouse also states that her career is suffering as a result of the applicant's immigration situation and she has been suspended from her job.

We find that although the record is deficient in providing supporting documentation for many of the hardship claims made, the record does establish that the applicant's spouse suffers from severe mental health problems. We also note that a medical document in the record, dated December 9, 2009, reports several inconsistencies regarding the applicant's spouse's treatment for her bipolar disorder. Nevertheless, we find that, despite these inconsistencies, the totality of the circumstances indicates that the applicant's spouse suffers from severe mental health problems and as a consequence of these health problems would experience extreme emotional hardship as a result of separation or as a result of relocating to Israel and moving away from her employment and family in the United States. Considered in the aggregate, the applicant has established that his spouse would face extreme hardship if his 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-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 favorable factors in the applicant's case include the extreme hardship the applicant's spouse would suffer if the applicant's waiver application is not granted, the emotional and financial support the applicant provides for his wife, the lack of any criminal record since 2004, and the remorse and regret the applicant expresses concerning his immigration violations. The unfavorable factors include the applicant's unlawful residence in the United States and the misrepresentations the applicant made in order to obtain a B-2 visitor's visa to enter the United States.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. 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 her burden and the appeal will be sustained.

ORDER: The appeal is sustained.