



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: APR 23 2014

OFFICE: NEW YORK DISTRICT

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:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

*[Handwritten signature]*

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting District Director, New York, New York denied the waiver application and 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 Brazil who was found 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 a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The acting district director concluded that the applicant 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. *See Decision of the Acting District Director*, dated August 23, 2013.

On appeal, counsel for the applicant contests inadmissibility and contends that the applicant's U.S. citizen spouse will experience extreme hardship if a waiver is not granted. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received September 25, 2013.

The record contains, but is not limited to: Form I-290B and counsel's statement thereon; an appellate brief and earlier brief in support of a waiver; various immigration applications, petitions and records related thereto; visa and travel-related documents; a hardship letter; a psychiatric evaluation; a letter from a licensed clinical social worker; medical records; documents related to the applicant's spouse's parents; birth, marriage and divorce certificates; family photos; employment, tax and financial records; and country-conditions documents for Brazil. The entire record was reviewed and considered in rendering this 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 record shows that on March 23, 1995, the applicant entered the United States and was admitted as an F-1 student for duration of status for studies to be completed by March 25, 1996. She subsequently departed the United States on or about August 18, 1997. On October 15, 1997, the applicant applied for a tourist visa and presented a Brazilian passport to a consular officer in Brazil. The passport contained the aforementioned F-1 visa and a March 23, 1995 entry stamp from the Los Angeles, California port of entry. The passport also contained a stamp dated January 13, 1996 which purported to show an entry at the Orlando, Florida port of entry. The consular officer found this to be a false stamp submitted by the applicant to mask an overstay of her prior

March 1995 visit.<sup>1</sup> The consular officer determined that this misrepresentation was material to the issuance of another nonimmigrant visa and found that the applicant was inadmissible under section 212(a)(6)(C) of the Act.

The record shows that after the applicant's visa was denied, she entered the United States without inspection or authorization through the Canadian border. In 2003, the applicant married a U.S. citizen and a petition for alien relative (Form I-130) and application for permanent residence or to adjust status (Form I-485) were filed in 2004.<sup>2</sup> The applicant traveled outside the United States a number of times in 2005 on advanced parole. In May 2012, then-counsel for the applicant requested that the applicant's Form I-485 be withdrawn as she had since divorced the petitioner and married her current U.S. citizen spouse. A new Form I-130 and I-485 were subsequently filed, as was a Form I-601 waiver application. When asked about the 1996 entry stamp during her June 25, 2013 adjustment of status interview, the applicant stated that she was unaware of its presence in her passport until confronted by the consular officer in Brazil. The applicant indicated that she suspects the stamp was placed there by an individual to whom she gave her passport to help her obtain a driver's license sometime between 1995 and 1997 when she was a student. When asked to explain why she believed this, the applicant was unable to do so. The acting district director notes that these statements by the applicant are inconsistent with those made during a January 26, 2006 interview in relation to her previous Forms I-130 and I-485. The record shows that on that occasion, when asked to explain the 1996 entry stamp in her passport, the applicant stated under oath that she had lost the passport and someone else was using it. Based on the foregoing, the district director concurred that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

Counsel for the applicant contests inadmissibility, noting that the consular officer denied the applicant's visa application in 1997 under section 214(b) of the Act believing her to be an intending immigrant, and counsel has "not been provided with any documentation that a previous finding of 212(a)(6)(C) fraud was made by the consular officer." Counsel further avers that "there has been no proof, or even evidence, of willfulness in regard to the Orlando stamp..." In these proceedings, the burden of proof lies solely with the applicant. The record clearly shows that while the consular officer indeed concluded that the applicant was an intending immigrant, he did so after finding that the purported January 1996 Orlando, Florida entry stamp was false, intended to mask a previous overstay, and represented a material misrepresentation to secure a tourist visa, making her inadmissible under 212(a)(6)(C) of the Act. Thus counsel's reference to the Foreign Affairs Manual, 9 FAM 40.63 N.6.3-1(1), is inapplicable. Counsel asserts that the acting district

---

<sup>1</sup> The AAO also notes that on her B-2 visa application, the applicant claimed that she had remained in the United States for 9 months after her March 1995 entry, when she had remained for over two years, until August 18, 1997. As noted above, according to her Form I-20, her studies were to be completed in March 1996.

<sup>2</sup> On the Form I-485, dated June 30, 2004 and signed by the applicant, she falsely asserts that her "date of last arrival" into the United States was on March 23, 1995 as an F-1 student. The record shows that the applicant was outside the United States in October 1997 when she applied for and was denied a tourist visa, and that she subsequently entered the United States without inspection or authorization. At the time of that filing, the applicant was not eligible for adjustment of status under section 245(i) of the Act, and, as she had entered without inspection, she was also not eligible for adjustment of status as an immediate relative of a U.S. Citizen under section 245(a) of the Act.

director's decision fails to explain how the applicant committed fraud; how denying knowledge of how a "fake stamp" was in her passport affected her ability to obtain a visitor visa; or how she would have obtained an immigration benefit from denying the existence of the stamp which showed an entry into the United States in January 1996 when she was in F-1 duration of status. As noted above, the applicant also provided false information on her nonimmigrant visa application, stating she had remained in the United States for 9 months, or until about December 1995. The fraudulent January 1996 entry stamp and this misrepresentation were relevant to her eligibility for a B2 visa, because they sought to shut off a line of inquiry concerning whether she had complied with the terms of her admission as an F-1 student. See *Kungys v. United States*, 485 U.S. 759 (1988); and *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961. As such, the applicant is inadmissible into the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

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 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 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 is a 50-year-old native and citizen of the United States who has been married to the applicant since January 2012. He contends that if the applicant is removed to Brazil, he will suffer hardship of a physical/familial and emotional/psychiatric nature, and his parents too will suffer loss. With regard to the latter, the applicant’s spouse avers that the applicant often helps his elderly mother and stepfather, to whom they are very close. The applicant’s mother-in-law writes that she and her husband live near the applicant and her spouse, both suffer a variety of medical ailments, and the applicant has offered to take them to medical appointments. She adds that it would be tragic for her entire family if the applicant could not remain in the United States. As previously noted, hardship to the applicant’s spouse’s mother and stepfather resulting from their separation from the applicant can be considered only insofar as it affects the applicant’s qualifying relative spouse.

The applicant’s spouse states that he and the applicant are undergoing infertility treatments to start a family, and medical records corroborating a substantial effort and commitment to treatment have been submitted. He adds that while adoption is an alternative, lawful immigration status is required of the applicant to adopt. The AAO acknowledges the applicant’s spouse’s desire to start a family and the significant efforts taken by him and the applicant to overcome their inability to do

so. While this does not itself rise to the level of extreme hardship, it is a factor that has been considered in the aggregate with all other separation-related hardship assertions.

MD relays from the applicant's spouse that the latter has a long history of major depressive illness-recurrent episodes with at least seven episodes of depression including a psychiatric hospitalization for suicidal ideation, and multiple treatments with psychiatrists and therapists utilizing medications and psychotherapy. Corroborating evidence includes a letter from M.D., confirming that the applicant's spouse was admitted to a psychiatric hospital, from August 2-6, 2010. The applicant's spouse states that he has been prescribed anti-depressants by a psychiatrist. The record contains a copy of a single prescription for Lexapro 10mg (30-day supply), dated October 17, 2012 by Nurse Practitioner. No diagnostic or treatment records by Mr. have been submitted for the record nor has evidence of any prior or ongoing treatment with a psychiatrist or other mental health professional. Dr. relays from the applicant's spouse that six to seven episodes of severe clinical depression were precipitated by relationship breakups, engagements, and two marriages. Dr. avers that separation from the applicant is "exactly the type of event" that triggered severe depression in her spouse on several occasions in the past and resulted in his inability to function, suicidal ideation and psychiatric hospitalization. He further posits that the severity, duration and recurrent nature of the applicant's spouse's depressive disorder increase the likelihood of a life-threatening recurrence if the applicant is removed. Dr. states that the applicant's spouse needs consistent psychiatric treatment and that Lexapro has been helpful to him lately. The applicant's spouse asserts that distress over the applicant's possible return to Brazil causes him stress, anxiety and sleepless night, sometimes obsessing such that he cannot work.

The evidence in the record does not show that the applicant is under consistent psychiatric treatment or that he is being prescribed medications by a psychiatrist. The evidence in the record does not fully corroborate that the applicant has a history of serious psychiatric illness precipitated by relationship breakups. While Dr. evaluation has been considered, it appears to rely almost entirely on self-reporting by the applicant's spouse, lacks any discussion of diagnostic testing or methods, and is not corroborated by documentary evidence of prior diagnoses, conditions, or treatment. While a short letter indicates that the applicant was once hospitalized in a facility where psychiatric care is provided, it cannot be extrapolated from the record the condition for which the applicant was admitted or his history as it relates to a potential separation from the applicant. And while the applicant's spouse contends that distress over the applicant's potential removal has resulted in his episodic inability to work, no documentary evidence has been submitted to demonstrate that his daily work as a physician has been compromised or otherwise affected by his psychiatric condition. While the evidence submitted lacks specific detail concerning the applicant's spouse's psychiatric history and does not demonstrate that he is currently under treatment or that his ability to work has been compromised, his condition, stated history, and the likely emotional and psychiatric impact of separation have been considered in the aggregate with all other assertions of hardship.

The AAO has considered in the aggregate all assertions of separation-related hardship to the applicant's spouse including the emotional/psychiatric impact of separation from the applicant; the

significant undertaking of infertility treatments and desire to start a family; the emotional and physical loss of the applicant's support and services to his spouse's parents and the impact of their hardship on him; and the permanent nature of the inadmissibility bar under section 212(a)(6)(C)(i) of the Act. The AAO finds the evidence in the record is sufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

The applicant's spouse asserts relocation-related hardship of an economic, familial and physical nature. He indicates that he has always resided in the United States where he enjoys close family ties - particularly to his elderly mother (now in her late 70s) and his stepfather (now in his early 90s), both of whom suffer from a number of medical conditions. Letters from their respective physicians confirm that the applicant's spouse's mother has a history of high blood pressure, digestive problems, GERD, and more recently a persistent cough and shortness of breath, and the applicant's spouse's stepfather has coronary artery disease, underwent quadruple bypass surgery in 1988, suffers from spinal stenosis for which he requires a walker, and was recently diagnosed with prostate cancer. The applicant's spouse explains that his parents will increasingly rely on him for their physical and emotional support because he is a medical doctor.

The applicant's spouse avers that it would be difficult for him to work as a physician in Brazil as he is not licensed there and does not speak Portuguese. He contends that it would be impossible to pay mortgages on the four properties he owns in the United States were he to relocate to Brazil. Income tax returns and financial records have been submitted for the record.

The applicant's spouse expresses concern that Brazil is a third-world country with high unemployment and crime rates. Country-related documents submitted for the record indicate that political protests can turn violent and crime is a problem, particularly in urban centers. Counsel contends that the applicant would be unable to secure medical care or access fertility clinics in Brazil. Country-related documents indicate that while medical care in Brazil is generally good, it may not meet U.S. standards outside of major cities. A United Nations report adds that while Brazil has significantly lowered its maternal mortality ratio over the last decade, serious disparities remain and access to specialized medical care for women remains problematic.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including his lifelong residence in the United States and adjusting, at 50 years of age, to a country in which he has never lived and does not speak the language; his close family ties to the United States - particularly to his elderly mother and stepfather, both of whom suffer a number of serious medical conditions and rely on him as both their son and as a physician; his professional, employment and community ties to the United States as a medical doctor serving both in private practice and as a contractor in a low-income area of the Bronx; his inability to practice medicine in Brazil where he is not licensed; his home and property ownership in the United States; and his stated economic, emotional/psychiatric, physical/medical, and safety concerns. Considered in the aggregate, the AAO finds the evidence sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to Brazil to be with the applicant.

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 AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. See, e.g., *Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

*Matter of Mendez-Moralez* at 300.

In *Matter of Mendez-Moralez*, 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 favorable factors in the present case include extreme hardship to the applicant's U.S. citizen spouse as a result of the applicant's inadmissibility; the emotional and physical support the applicant provides to her spouse and her essential presence in his life; the applicant's significant family ties to the United States, particularly to her elderly in-laws who both have significant medical conditions and rely on her for emotional and physical support; and her payment of taxes and apparent lack of any criminal record. The unfavorable factors are the applicant's immigration violations, which include her procurement of a false U.S. entry stamp, misrepresentations related to her 1997 visa application, and a false statement on her 2004 adjustment of status application, as well as her periods of unlawful presence and unauthorized employment in the United States. Although the applicant's violations of immigration law are significant, the positive factors in this case outweigh the negative factors. Therefore, pursuant to section 212(i) of the Act, the AAO finds that a favorable exercise of discretion is warranted.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

**ORDER:** The appeal is sustained.