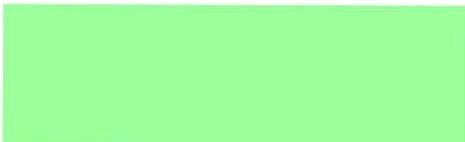


(b)(6)

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

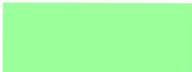


U.S. Citizenship
and Immigration
Services

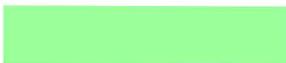


Date: JUN 05 2014

Office: NEW YORK, NEW YORK

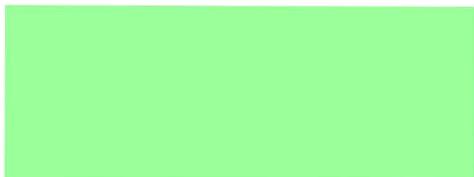
FILE: 

IN RE:

Applicant: 

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:

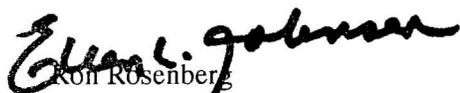


INSTRUCTIONS:

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,



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 Panama who misrepresented her marital status in order to obtain a visitor's visa to enter the United States. The applicant 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). She is the wife of a U.S. citizen and has one U.S. citizen child. The applicant is seeking a waiver under 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 had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on October 7, 2013.

On appeal, counsel for the applicant asserts the applicant's spouse and child will suffer extreme hardship if the applicant is excluded from the United States.

The record contains, but is not limited to, the following documentary submissions: statements from counsel for the applicant; statements from the applicant, her spouse and their family members; tax returns for the applicant's spouse; medical documents for the applicant; background materials on Lupus disease; and financial records such as bank statements, tax returns, school records and wire transfer receipts from the applicant's husband.

Section 212(a)(6)(C) of the Act states, in pertinent part:

- (i) In general. 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 chapter is inadmissible.

The record indicates that the applicant misrepresented her marital status to a consular officer in Panama in order to obtain a visitor's visa to enter the United States. As this misrepresentation would have a tendency to influence the decision of the consular officer, it is a material fact and the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for misrepresentation of a material fact.

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

- (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 or, in the case of a

VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 an applicant or their children 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-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 entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal counsel asserts that the applicant's spouse's family members would not be able to provide assistance in caring for the applicant's daughter, and that the director incorrectly assumed it was the choice of the family not to send their daughter to Panama with the applicant because circumstances necessitated that she remain in the United States. Counsel asserts the Acting Field Office Director failed to consider the impact that the applicant's diagnosis of Lupus would have on her qualifying relative, and failed to consider the hardship impact on the applicant's child.

With regard to the hardship upon separation, counsel asserts that the applicant's family would be compelled by circumstances to have the applicant's daughter remain in the United States, resulting in additional physical and financial hardships for the applicant's spouse. The record contains statements from relatives and family members explaining how they would be unable to assist the applicant's spouse, as well as background materials on the lack of health care resources available in Panama. The background materials on Panama establish that the care the applicant would receive would not be at the same level she is receiving in the United States. This lack of care would result in a deterioration of the applicant's condition, leaving her incapable of caring for her young daughter. For this reason, the applicant's spouse states he cannot send his daughter to live with her mother in Panama. The record also contains a statement from the applicant's spouse stating he has a heavy work and school schedule which would result in the need to provide child care for his daughter. Based on this evidence the record indicates that the applicant's spouse would experience physical and emotional hardship from having to assume parenting duties if the applicant were removed.

Counsel explains on appeal that the applicant has been diagnosed with Lupus, and states that she will eventually need to be cared for and that the applicant will be unable to receive proper medical care in Panama for her condition. The record contains letters from two doctors addressing the applicant's diagnosis of Systemic Lupus Erythematosus (SLE), commonly known as Lupus. The letters state that the applicant has been diagnosed with Lupus Nephritis, is seeing a kidney doctor, is taking numerous medications, and that her condition is severe and prognosis guarded. As noted above, the

record contains country conditions materials and other documentation discussing the availability and accessibility of health care resources in Panama. The background materials on SLE indicate that the applicant will likely need heightened medical care in some form for the rest of her life. *See Systemic Lupus Erythematosus (Lupus)*, American College of Rheumatology, www.rheumatology.org, printed November 5, 2013. If the applicant were removed at this point, disrupting the continuity of her medical care with the doctors and health care practitioners familiar with her history her husband would experience emotional hardship as he would have concerns about his wife's well-being that would be beyond the normal concerns of the spouse of someone removed from the United States.

With regard to financial hardship, counsel for the applicant asserts that the applicant's spouse is the sole provider for the applicant and their child. The record contains country conditions materials and documents detailing the available medical facilities in Panama. The record also contains wire transfer receipts and documentation to support the claim that the applicant's spouse is supporting his niece in Panama. The country conditions materials discussing the availability and accessibility of health care in Panama establish that the applicant's spouse would have an increased financial burden from having to provide for his spouse's medical treatment in Panama, including the cost of prescription medicines.

The record contains two reports from Dr. [REDACTED] regarding the mental and emotional impact on the applicant's spouse. Dr. [REDACTED] narrates the background of the applicant and his spouse and then concludes "[t]he damage to [applicant's spouse] and his daughter would be unconscionable." *Statement of Dr. [REDACTED]* dated November 21, 2013. He bases this largely on the additional and uncommon concern for the applicant's health that the applicant's spouse will experience as a result of the applicant residing in Panama. The record also contains numerous statements from friends and family members of the applicant attesting to the emotional impact on the applicant's spouse if they applicant were denied admission.

When the hardship factors upon separation are considered in the aggregate, the record establishes that they rise above the common hardships experienced by the relatives of inadmissible aliens to a level constituting extreme hardship upon separation.

With regard to hardship upon relocation, the applicant's spouse has asserted that he would not be able to find commensurate employment in Panama to support his spouse. *Affidavit*, dated November 1, 2013. When the applicant's medical condition is considered, along with the fact that the applicant's spouse would lose his union-provided medical insurance coverage upon relocation and will have to separate from his family members residing in the United States, it is reasonable to conclude that the applicant's spouse would experience financial hardship upon relocation, heightened by the need to care for the applicant who has a serious medical condition. When these hardship factors are considered in the aggregate with the common hardships experienced upon relocation, they rise to a level of extreme hardship.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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 section 212(h)(1)(B) 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-Moralez, 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 unfavorable factors in this case include the applicant's misrepresentation and periods of unauthorized presence. The favorable factors in this case include the presence of the applicant's spouse and U.S. citizen child, the extreme hardship the applicant's spouse and child would experience due to her inadmissibility and the lack of any criminal record during her residence in the United States.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. 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.