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



U.S. Citizenship
and Immigration
Services

[REDACTED]

DATE: FEB 26 2015

OFFICE: TAMPA

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 of Ron Rosenberg in black ink.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Tampa. The Field Office Director also summarily dismissed the applicant's motion to reopen and to reconsider, 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 Venezuela who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure a benefit through willful misrepresentation of material facts. The applicant, through counsel, seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside with his U.S. citizen spouse in the United States.

The Field Office Director concluded the applicant failed to establish extreme hardship to his qualifying relatives, in his case his spouse and U.S. citizen parents, and she denied the Application for Waiver of Grounds of Inadmissibility accordingly. *See Decision of the Field Office Director*, dated October 24, 2013. The Field Office Director also summarily dismissed the applicant's motion to reopen and to reconsider her previous decision, concluding the motion "failed to provide relevant new facts or precedent decisions." *See Decision of the Field Office Director*, dated January 8, 2014.

On appeal, the applicant asserts U.S. Citizenship and Immigration Services (USCIS) committed errors of law and fact and abused its discretion by: disregarding new evidence and its own policies; departing from precedent decisions when analyzing extreme hardship; and misidentifying evidence in the record that could have been erroneously used to support the denial decision.¹ *See Form I-290B, Notice of Appeal or Motion*, dated January 14, 2014; *see also Brief in Support of Appeal*, dated February 19, 2014.

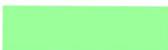
The record includes, but is not limited to: briefs, motions, and legal correspondence; statements by the applicant and affidavits by his spouse and parents; letters of support attesting to the applicant's good character; a police clearance letter; documents concerning identity, relationships, and immigration status; academic, employment, financial, medical, and mental-health documents; photographs; and documents about conditions in Venezuela. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6) of the Act provides, in relevant part:

(C) Misrepresentation.-

(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

¹ The Field Office Director's decision lists, among the applicant's evidence, a "medical diagnosis letter for [REDACTED] [REDACTED] On appeal the applicant indicates he does not know this individual. Moreover, the record does not include such a letter. We find the Field Office Director's reference to this medical letter to be a harmless error, however, because it was not included in the denial decision's analysis concerning hardship to the applicant's qualifying relatives.



documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

...

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

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

- (1) The Attorney General [now Secretary of Homeland Security (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.

The record reflects U.S. immigration officials admitted the applicant to the United States as a nonimmigrant visitor on May 5, 2007, with permission to remain until November 4, 2007. On October 30, 2007, the applicant affirmatively filed an asylum application and supporting documentation with the assistance of an individual he believed was a paralegal. The documentation included medical and psychological records and a letter describing the applicant's membership and activities with an opposition political party. After it was determined that his supporting documents were not authentic, the applicant's asylum claim was referred to the immigration court.

On March 31, 2010, an immigration judge granted the applicant voluntary departure until July 29, 2010, with an alternate order of removal to Venezuela. On April 6, 2010, the applicant timely departed from the United States. On May 28, 2010, the applicant registered with the U.N. High Commissioner for Refugees (UNHCR) in Costa Rica, and on October 10, 2010, the applicant was accorded refugee status there. The Costa Rica office of the UNHCR subsequently referred the applicant for resettlement as a refugee in the United States, but on April 8, 2011, the applicant withdrew his application for resettlement for "personal reasons." On August 8, 2011, U.S. immigration officials admitted the applicant to the United States as a nonimmigrant visitor with permission to remain until February 7, 2012. The record reflects the applicant's permission has expired, and he has not left the United States since his last entry.

Based on the foregoing, the applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding of inadmissibility.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not relevant under the statute and is considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S.

citizen spouse and parents are qualifying relatives in this case. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296 (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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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 BIA 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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. INS*, 138 F.3d 1292, 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.

Discussing the emotional and psychological hardships she would experience in the applicant's absence because of his inadmissibility, the applicant's spouse indicates: she suffers from anxiety, depression, panic attacks, and posttraumatic stress disorder (PTSD); she was diagnosed with depression at age 17; these conditions have physical manifestations and also prevent her from thinking clearly and calming herself; the applicant is "indispensable" to her recovery; she gets through difficult episodes with the support of her family, including her sister who lives nearby; and she has recently experienced a relapse in her depression and anxiety because of the applicant's immigration matters. To corroborate his spouse's statements, the applicant submits a letter from his spouse's psychiatrist, dated November 8, 2013, indicating she is undergoing medication management for depression and social phobia, and individual therapy is recommended. The psychiatrist also concludes that the applicant's spouse requires continual psychiatric care and lifelong treatment with medication. In addition, the applicant submits a letter from a psychologist dated December 19, 2012, indicating his spouse has struggled with depression all of her life and is undergoing treatment for major depressive disorder; her symptoms "considerably worsen when she is not seen and monitored consistently"; and she "has had marked difficulty with maintaining psychological wellness on her own." The record also includes a mental-health assessment dated January 12, 2012, indicating a counselor diagnosed the applicant's spouse with recurrent major depressive disorder that is severe without psychotic features, and PTSD. The counselor further states that antidepressant medicines are not completely effective in treating her depression and PTSD, and she will need the applicant's assistance in addition to counseling.

The applicant's spouse also discusses her medical history. She has experienced a benign fibroadenoma; polyps; the removal of a lump under her left arm; and the surgical removal of cysts in 2009 and 2011. She indicates she continues to be monitored for precancerous cells detected after a Pap smear. The applicant submits medical documents that corroborate his spouse's statements, including a letter from her physician dated November 1, 2013, recommending close follow-up and a colonoscopy because adenomas in individuals her age are "unusual." The applicant also submits a letter from his spouse's treating physician dated November 10, 2014, indicating she is undergoing a "high risk pregnancy" and recommending continuous observation because of her medical history. The record establishes the applicant plays an essential role in the emotional and physical care of his spouse and the treatment of her ongoing mental health and medical conditions.

The applicant's spouse also discusses the financial hardship she would suffer if the applicant were removed from the United States, indicating: she earns an annual salary of \$58,302.24, and the applicant's hourly salary of \$16.34 has helped them manage their debt; and they help the applicant's parents financially by providing monthly assistance totaling \$400. To corroborate his spouse's statements, the applicant submits letters of employment and earnings statements, verifying his employment and hourly salary at [REDACTED] and his spouse's employment at [REDACTED]

The record also includes billing and bank account statements; a self-reported

expense sheet, indicating a breakdown of monthly expenses amounting to \$5,291 and a monthly household income of \$5,400; and the applicant's spouse's tax return for 2010. The record sufficiently shows the applicant's spouse's financial obligations and that she may have difficulties meeting those obligations without the applicant.

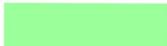
The concerns regarding the emotional and physical hardship the applicant's spouse would experience in the applicant's absence are substantial. When evidence of this hardship is considered in the aggregate, given her ongoing medical and mental-health care and her dependence on the applicant's contribution to their household income, the record establishes the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

In an affidavit dated January 12, 2013, the applicant's U.S. citizen parents indicate that separation from the applicant would leave them feeling abandoned, depressed, disappointed, and without hope as: the applicant is their eldest son, and he provides them emotional support, runs errands for them, and transports them to their medical appointments; they would worry if he were to return to Venezuela, which they were "compelled to leave" due to threats to family members; he assisted them with the purchase of their home and continues to provide them each month with \$400; and they would need to file for governmental assistance and credit consolidation in the applicant's absence.

The record does not include corroborating evidence of his parents' emotional and financial hardship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Though the applicant's parents may experience certain hardships in the applicant's absence, the evidence, considered in the aggregate, does not establish the applicant's parents would suffer extreme hardship as a result of separation from the applicant.

Concerning the hardship she may experience if she were to relocate to Venezuela, the applicant's spouse indicates she could not live in Venezuela because of its pollution, poverty, and the anxiety that she experienced living there as a child. She also indicates she and the applicant would not have the support of family members, as their siblings and the applicant's parents live in [REDACTED] she would not trust medical and mental-health care providers there; her nursing credentials would not be valid in Venezuela; she wants to serve her country, the United States, where there is a nursing shortage; she receives employment-based benefits in the United States, which she would not have in Venezuela; and she and the applicant would be financially strained because of the difficult economic situation and governmental corruption there. To support his spouse's assertions, the applicant submits documents about economic, political, and social conditions in Venezuela as well as an Internet article by the American Association of College of Nursing dated August 6, 2012, concerning a projected nursing shortage in the United States.

The evidence reflects the applicant's spouse has resided in the United States for about 11 years, where she maintains steady employment, a close connection with her family and community ties, and she relies on ongoing treatment and monitoring of her mental health and medical conditions as well as her high-risk pregnancy. Moreover, the U.S. Department of State states:



Violent crime in Venezuela is pervasive ... Common criminals are increasingly involved in kidnappings and may deal with victims' families directly. In addition, there is cross-border violence, kidnappings, drug trafficking, and smuggling along Venezuela's western border.

Travel Warning, Venezuela, last updated December 11, 2014.

As previously noted, the record reflects the applicant was accorded refugee status in Costa Rica on October 10, 2010. The record also reflects the applicant last departed Costa Rica on or about August 8, 2011, without obtaining prior authorization from the Costa Rican authorities. In response to our request for evidence concerning his current immigration status there, the applicant submits a Costa Rican attorney's legal opinion dated December 20, 2014, indicating the applicant did not renew his refugee status card, as required by Costa Rican immigration laws. The attorney also indicates that since the applicant "substituted" as his place of habitual residence the United States for Costa Rica, "the status of asylum [sic] or refugee would have ceased." The applicant submits a copy of his identity card issued by Costa Rican authorities, identifying him as a refugee, with an issuance date of November 5, 2010 and expiration date of October 13, 2011. Based on the foregoing, coupled with evidence of his unauthorized departure from Costa Rica, and his failure to return to Costa Rica, it is reasonable to conclude that the applicant has abandoned his refugee status in Costa Rica; therefore neither he nor his spouse would be able to relocate there.

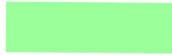
We thus conclude that when evidence of hardship is considered in the aggregate, given the applicant's spouse's ongoing treatment and monitoring of her mental health, medical conditions, and high risk pregnancy; her steady employment; her strong family and community ties to the United States; conditions in Venezuela; the likelihood that the applicant has lost his refugee status in Costa Rica; and the normal hardships associated with relocation, the record establishes the applicant's spouse would suffer extreme hardship as a result of relocation.

The record also includes evidence of hardship to the applicant's U.S. citizen parents if they were to relocate to Venezuela. Having found that the applicant established extreme hardship to his U.S. citizen spouse, however, we do not require him to also establish extreme hardship to his U.S. citizen parents.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. at 301. 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.

In *Matter of Mendez-Morales*, 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 BIA further stated that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.*

The favorable factors in this case include extreme hardship to the applicant's U.S. citizen spouse; hardship to his U.S. citizen parents; letters of support and a newsletter article attesting to his good moral character; his steady employment; and the lack of a criminal record. The unfavorable factors include the applicant's misrepresentation and his remaining in the United States beyond the authorized period after his last entry. 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.

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.