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



U.S. Citizenship  
and Immigration  
Services

[Redacted]

DATE: MAY 28 2015

[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)

ON BEHALF OF APPLICANT:

[Redacted]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Ukraine who entered the United States using a photo-substituted passport. She was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The Field Office Director determined that the applicant had not established extreme hardship to her qualifying relative if she were removed from the United States and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of Field Office Director*, dated June 16, 2014.

On appeal, the applicant, through counsel, asserts that the Field Office Director incorrectly analyzed the evidence of extreme hardship that her qualifying spouse would suffer if she were removed from the United States by looking at certain documents selectively while giving others little weight. *Form I-290B, Notice of Appeal or Motion*, dated July 14, 2014.

The record of evidence includes, but is not limited to: statements from applicant, her qualifying spouse and his daughter; identity and relationship documents; financial documentation; medical documentation; a psychosocial evaluation; and reports on conditions in Ukraine. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

Section 212(i) of the Act provides:

(1) The Attorney General [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.

In the present case, the record reflects that on June 17, 2004, the applicant entered the United States using a photo-substituted passport belonging to another individual. The applicant is therefore

inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. The applicant's qualifying relative is her U.S. citizen spouse. The applicant does not contest the finding of inadmissibility.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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-Morales*, 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 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 has the burden of proof to establish that her qualifying spouse would suffer extreme hardship in the event that he resides in Ukraine or in the United States.

With respect to the emotional hardship he would experience if he were to relocate with the applicant to Ukraine, the record reflects that the applicant's spouse and his two adult children were born in Poland. The applicant's spouse, age 60, has lived in the United States for 22 years and has been a U.S. citizen for 6 years. The applicant's spouse's two adult children reside in the United States. He states that he has no family outside of this country. If he were to relocate to Ukraine, he would suffer emotional hardship due to the separation from his family. The record includes a letter from the applicant's spouse's son, who has taken over his father's business and currently lives in Florida.

To address the medical hardship her spouse would experience in Ukraine, the applicant submits articles addressing insufficiencies in the national healthcare system and environmental hazards, particularly in the vicinity of the applicant's birth place. The record reflects that the applicant's spouse, due to a workplace injury, requires ongoing medical care, because he is limited in his ability to work and conduct his daily activities. In addition, the evidence reflects that the applicant's spouse continues to receive treatment for pain management and other medical conditions.

Considering the evidence of the applicant's spouse's medical conditions in conjunction with the articles related to Ukraine's healthcare system, we conclude that the applicant's spouse would experience hardship due to the lack of suitable healthcare and the existence of environmental hazards that likely would diminish the quality of his life.

The applicant has established that her qualifying spouse would suffer extreme hardship in the event he moved to Ukraine. He has resided in this country for more than twenty years. His family and friends reside here. He has never lived in Ukraine, does not speak Ukrainian, and has no family ties there. His health issues would be difficult to manage in Ukraine and, taken into account with his age and inability to communicate in Ukrainian, it is reasonable to conclude that that he would experience significant difficulties finding employment. Cumulatively, the hardship the applicant's spouse would experience upon relocation to Ukraine amounts to extreme hardship.

The next issue we will address is whether the applicant has established that her qualifying spouse would endure extreme hardship if she returns to Ukraine and he remains in the United States.

According to the applicant's qualifying spouse, he relies upon the applicant for emotional support. He says he is grateful to God for bringing the applicant into his life, because she cares for him and goes to all of his medical appointments with him. He further states that the applicant's care and love have helped him to overcome depression. In a letter the applicant's qualifying spouse's son states that his father's quality of life, including his mental health, have improved significantly since the applicant entered his life. The applicant underwent a psychological evaluation in 2013 to determine whether "there was significant hardship regarding the immigration case for his wife." A psychologist determined that the applicant's qualifying spouse, who experiences daily pain and has been suicidal, "appears to be emotionally dependent upon [the applicant] and fearful that [losing] her will propel him back into the darkness." He diagnosed the applicant's spouse as having major depression and generalized anxiety. He recommended that the applicant's spouse follow up with a psychiatrist for a medication review and to become involved in regular therapy.

In his decision the Field Office Director noted inconsistencies within the psychological evaluation. Specifically, according to the denial decision, the psychologist indicated that the qualifying spouse suffers from mild to moderate depression and, later in the same report, states that the spouse suffers from major depression. It appears, however, that the disparate conclusions in the psychological report encompass the results of two separate tests and are not two inconsistent conclusions. The evaluation shows that, according to the Beck Depression Inventory, the applicant's spouse was deemed to have mild to moderate depression. The evaluation also shows that, according to another personality test, he scored as having major depression. The slightly different test results, therefore, do not undermine the credibility of the psychologist's report. The record establishes that the applicant's spouse is experiencing depression related to the applicant's immigration issues.

To support her claim that her spouse would experience physical and medical hardship without her, the applicant submits a medical examination report dated March 22, 2005; a functional capacity evaluation, dated February 2006; a list of prescriptions filled for the applicant's spouse between January and July 2013; a 2009 notice of decision from the Social Security Administration's Office of Disability Adjudication and Review; and two letters from the [REDACTED] Clinic. The evidence indicates that the applicant's qualifying spouse suffered a work-related injury in 2001 and has been unemployed for over 10 years, since 2004. The Social Security Administration determined he has been disabled since the date of his injury through the date of its decision.

The Field Office Director, in his decision, gave less weight to an urgent-care center physician's letter, noting that it was unclear if the physician treated the applicant regularly. On appeal the applicant submits an undated letter from the same physician, asserting that, though the name of his practice incorporates the words "urgent care," the qualifying spouse has been visiting his clinic monthly for more than seven years.

The applicant asserts that her spouse requires assistance with daily activities, such as showering and tying his shoes. The physician asserts in both of his letters that the applicant's spouse "needs help with his daily activities." Although one report, cited in the denial decision, states that the applicant's

spouse was capable of managing his daily activities in 2007, the same report specifies that the applicant's spouse claimed he could not shave, because he must sit down to cope with his pain; he also could not complete any housework. In addition, the record indicates that the applicant's spouse takes medication for chronic pain, inflammation, allergies, asthma and gastroesophageal reflux disease. The record also establishes that the applicant's spouse has had other serious medical conditions in the past, including tuberculosis, alcoholism, and ulcers, and that he underwent surgery on his spine and to remove part of his lung and stomach.

The documentation in the record, when considered cumulatively, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship if she were removed from the United States. The applicant's spouse has been determined to be disabled and relies upon the applicant to help him with basic living activities. In addition, his incapacity affects his ability to maintain employment. The record establishes that he is emotionally and physically dependent upon the applicant, and taking into account his medical and psychological history, would experience extreme hardship without her in the United States.

In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the applicant has established extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act.

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. 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.

*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-Morales*, 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-Morales* 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 states 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.* at 301.

The favorable factors include the applicant's family ties in the United States; extreme hardship to her U.S. citizen spouse; the length of time she has lived in the United States; her good moral character, as indicated in letters friends and family submitted on her behalf; her payment of U.S taxes; and her lack of a criminal record.

The unfavorable factors are the applicant's misrepresentation to gain entry into this country. She also obtained a driver's license using a false name.

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.