

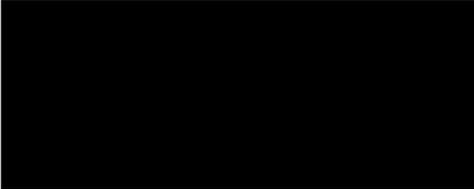
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
*Office of Administrative Appeals* MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

H6



FILE: [Redacted] Office: [Redacted] Date: **AUG 18 2010**

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), and section 212(i) of the Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Thank you,



Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Vienna, Austria. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Lithuania who was found to be inadmissible to the United States pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien previously removed; section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year; and section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), for alien smuggling. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), in order to reside with her husband in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to her spouse. In addition, the officer in charge found that the applicant did not merit the favorable exercise of discretion because she has shown a blatant disregard for U.S. immigration law. The officer in charge denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) as well as the applicant's Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) accordingly. *Decision of the Officer in Charge*, dated August 29, 2008.<sup>1</sup>

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, indicating they were married on December 18, 2005; a copy of certificate; a copy of the passport of the couple's U.S. citizen daughter; two psychological reports for letters from letters from numerous letters of support, including from members; photos of the applicant and her family; financial and tax documents; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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<sup>1</sup> In situations where an applicant must file a Form I-212 and a Form I-601, the adjudicator's field manual clearly states that the Form I-601 is to be adjudicated first. Chapter 43.2(d) of the Adjudicator's Field Manual states, "If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose." Thus, based on this rule, in a situation like the applicant's, where there is one appeal that has been filed and either the Form I-212 or the Form I-601 could be considered on appeal, generally, the AAO will review the Form I-601.

Section 212(a)(6)(E) of the Act provides:

- (i) *In general.* - Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible. . . .
- (iii) *Waiver authorized.* - For provision authorizing waiver of clause (i), see subsection (d)(11) of this section.

Section 212(d)(11) of the Act provides:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in [her] discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien . . . seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

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

(A) *Certain aliens previously removed.*

....

(ii) *Other aliens.* Any alien not described in clause (i) who –

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal . . . is inadmissible.

(iii) *Exception.* – Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [Secretary] has consented to the alien's reapplying for admission.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) *In general.* - Any alien (other than an alien lawfully admitted for permanent residence) who -

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(iii) *Exceptions.*

....

(II) *Asylees.* - No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

....

(v) *Waiver.* - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Section 212(a)(6)(C)(i) of the Act provides:

*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 Act is inadmissible.

Section 212(i) provides:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien. . . .

In this case, the record shows that the applicant entered the United States on April 20, 2000, as a B-2 visitor with authorization to remain in the United States until October 19, 2000. The officer in charge found, and the applicant does not contest, that she paid someone approximately \$3,000 to obtain a passport containing a U.S. visa in order to smuggle her daughter into the United States. The applicant remained in the United States after her period of authorized stay expired and she applied for asylum on January 20, 2004, based on her sexual orientation as a lesbian. The applicant's asylum application was referred by the [redacted] and the applicant was placed in removal proceedings. On December 8, 2004, the immigration judge denied the applicant's request for asylum and ordered her removed to Lithuania. The applicant filed an appeal with the Board of Immigration Appeals (BIA), which dismissed her appeal on March 20, 2006. The applicant then filed an appeal with the Eleventh Circuit Court of Appeals. The applicant remained in the United States until her departure on January 16, 2007.

The AAO finds that the applicant knowingly assisted her daughter in entering the United States unlawfully. Therefore, the applicant is inadmissible pursuant to section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E). Furthermore, the applicant accrued unlawful presence from October 20, 2000, after her authorized stay expired, until January 20, 2004, when she filed an application for asylum. Therefore, the applicant accrued unlawful presence of over one year. She now seeks admission within ten years of her January 2007 departure. Accordingly, she is also inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more.

Moreover, the AAO finds that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. As stated, the applicant applied for asylum on January 20, 2004, based on her sexual orientation as a lesbian. The applicant, through counsel, concedes that she filed an asylum application "know[ing] that the lesbian claim was not true." [redacted] dated July 21, 2010, and March 30, 2009. Therefore, the record shows that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).<sup>2</sup>

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<sup>2</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

A waiver of inadmissibility under sections 212(a)(9)(B)(v) and 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 or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

*Id.* See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., [REDACTED] and [REDACTED] (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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. See *Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; see also *U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, [REDACTED] of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme

hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. See, e.g., *Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. [REDACTED] 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)) [REDACTED] 2.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. [REDACTED] I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. [REDACTED] 38 F.3d at 1293.

In this case, the record reflects that the applicant wed [REDACTED] a U.S. citizen, on December 18, 2005. A passport of the couple’s U.S. citizen daughter indicates she was born on December 1, 2008. The applicant’s spouse is a qualifying relative for purposes of a section 212(a)(9)(B)(v) and section 212(i) waiver. Hardship to the applicant’s child will be considered only insofar as it results in hardship to a qualifying relative.

[REDACTED] states that after his wife departed the United States, he has suffered emotionally, physically, and financially. [REDACTED] states that he had an injury in November 2007 that led to an operation to remove cartilage from his knee. He states he had difficulty working, moving, driving, and “even do[ing] [his] basic life routines.” He contends that this health problem worsened his financial situation as he was not able to work as much as before and incurred medical expenses. He claims that he continues to undergo treatments for his knee and that his physician recommends a knee replacement in the near future. He contends he needs his wife by his side for this upcoming surgery. In addition, [REDACTED] states he was deeply saddened and depressed for months after his wife was deported from the United States when she was six weeks pregnant and subsequently lost the baby. Furthermore, [REDACTED] contends he was unemployed from April to August 2006, but that he was able to survive on his wife’s income. [REDACTED] states he has found a job and is now paying for all of his own expenses as well as his wife’s expenses. He claims his home was foreclosed and he filed for Chapter 7 bankruptcy. *Notice of Appeal or Motion (Form I-290B)*, dated September 15, 2008; [REDACTED] dated [REDACTED]

June 29, 2008, March 10, 2008, and undated. A Notice of Eviction and an Order from the U.S. Bankruptcy Court confirm that [REDACTED] has been evicted and declared bankruptcy. [REDACTED], dated July 23, 2009; *United States Bankruptcy Court, Discharge of Debtor*, dated June 15, 2010.

A letter from [REDACTED] physician states that [REDACTED] had surgery in December 2007 on his left knee and that he has continued to have pain, limited motion, and limited function. According to the doctor, “[d]ue to these difficulties, he is unable to do any type of work that involves walking, standing, kneeling, or squatting, and he is unable to care for his home.” In another letter, the doctor states that [REDACTED] has “significant medial compartment arthritis into the left knee.” His physician states that he has had several steroid injections, but continues to have “significant pain and discomfort with most functional daily activities and it is likely [he will] need at least partial knee replacement in the near future.” According to his physician [REDACTED] will need his wife to assist him for at least six months following his surgery in order “to help with his rehab and to allow for a safe recovery from this surgery.” Furthermore, [REDACTED] physician states he also has a significant herniated disc in his lumbar spine for which he needs steroid injections and may need back surgery. [REDACTED] dated October 29, 2009, September 5, 2008, and March 17, 2008; *see also Letter* [REDACTED] dated November 16, 2009; [REDACTED], dated November 10, 2009 (s [REDACTED] to repair a torn meniscus in the left knee and will require his wife’s assistance for four to six months following surgery”)

A letter from a psychiatrist states that [REDACTED] is a refugee from Iran whose family suffered from religious persecution. The psychiatrist contends that [REDACTED] removal, including the fact that she experienced a miscarriage while on her flight back to Lithuania, has caused [REDACTED] to “reawaken old trauma for a vulnerable individual.” The psychiatrist diagnoses [REDACTED] with post traumatic stress [REDACTED] *Martin Carroll*, dated December 9, 2009; *see also Letter* [REDACTED] September 4, 2007 (diagnosing [REDACTED] with major depressive disorder).

[REDACTED] mother, [REDACTED], states that she is seventy years old and a widow. According to [REDACTED], she is suffering from dementia, has had several strokes, has severe arthritis for which she had both her knees replaced, and high blood pressure. [REDACTED] states that although she has three daughters in the United States, one daughter has a full-time job, has diabetes, and has two autistic children, and another daughter has extreme anxiety and a phobia of driving to the extent that she needs assistance for her own basic needs. [REDACTED] contends her son is her biggest support. She states that since the applicant departed the United States, her son has had his house foreclosed and his furniture is in her house and in her daughter’s garage. She claims that if her son leaves the United States, she will be unable to visit him due to her physical disabilities and that the applicant’s immigration situation has caused her to become depressed. [REDACTED], dated December 9, 2009, and March 26, 2009. A letter from [REDACTED] that she has a history of cerebral and carotid atherosclerosis, suffers from prior stroke, and suffers from mild cognitive impairment and early dementia. According to the physician, [REDACTED] 24-hour a day, 7-day a week supervision.” [REDACTED], dated October 8, 2009; *see also* [REDACTED], dated February 27, 2008.

states that she has diabetes and has autistic children. She contends that before her brother married the applicant, he helped her with babysitting and playing with the kids, and that after he got married, the relationship between their two families became even stronger. According to her children, due to autism, cannot accept changes and ask a lot of questions, including why furniture is in their garage and where do and . dated December 11, 2009, and March 24, 2009. A copy of multidisciplinary assessment in the record indicates that one of was diagnosed with attention deficit/hyperactivity disorder and her other son has "significant sensory processing issues . . . and . . . significant delays in both his understanding and use of language." *Wake County Public School System, Preschool Multidisciplinary Assessments*, dated September 27, 2007, and September 29, 2008. The record also contains a letter indicating is in default and a subsequent letter indicates that his house is in foreclosure proceedings. dated April 7, 2009; *Letter from Wells Fargo Home Mortgage, Default Department*, dated January 27, 2009.

After a careful review of the evidence, the AAO finds that the applicant has established her husband has suffered and will continue to suffer extreme hardship as a result of the applicant's waiver being denied.

The record shows that has been diagnosed with PTSD and major depressive disorder. In addition, the record contains voluminous documentary evidence addressing the couple's finances, including evidence the applicant owned her own cleaning business and, thus, helped financially support the family while she was in the country. The record shows that since the applicant's departure, had his house foreclosed upon and has declared bankruptcy. Furthermore, the record indicates that requires knee surgery, may also need back surgery, and that he will require the assistance of his wife during his recovery. Considering these factors cumulatively, the AAO finds that if remained in the United States without the applicant, he would suffer extreme hardship.

Furthermore, it would also constitute extreme hardship for to move to Lithuania to be with his wife. The record shows that helps to care for his elderly mother, who has several health problems and requires care and supervision twenty-four hours per day. In addition, would be leaving his entire immediate family, including his mother and his sisters, all of whom are U.S. citizens and refugees from Iran. Under these circumstances, and considering physical and mental health conditions as noted above, the hardship would experience if his wife were refused admission is extreme, going well beyond those hardships ordinarily associated with inadmissibility. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that faces extreme hardship if the applicant is refused admission.

In that the applicant has established that the bars to his admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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 . . . 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*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance 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).

In this case, the AAO finds that the applicant does not warrant a favorable exercise of discretion. The adverse factors in the present case include that the applicant is inadmissible on three separate grounds of inadmissibility – *i.e.* alien smuggling, unlawful presence, and misrepresentation. In addition, as counsel concedes, the applicant filed an asylum application "knowing[ly] that the lesbian claim was not true." [REDACTED] [REDACTED], and [REDACTED]. Not only did the applicant affirmatively file an asylum application she knew was untrue, but she continued to perpetrate this fraud by bringing her asylum claim before an Immigration Judge, and then appealing the denial of her asylum application to the [REDACTED] Board of Appeals. Thus, the applicant has perpetrated an on-going, continuous fraud for years, wasting government resources and abusing the asylum program. The favorable and mitigating factors in the present case include: the applicant's family ties in the United States, including her U.S. citizen husband; the extreme hardship to the applicant's husband if she were refused admission; and the applicant's lack of any criminal convictions.

The AAO finds that, when taken together, the favorable factors in the present case do not outweigh the significant violations of this country's immigration laws such that a favorable exercise of discretion is warranted. Since the applicant is ineligible for a waiver as a matter of discretion, no purpose would be served in adjudicating her waiver under section 212(d)(11) of the Act. Accordingly, the appeal will be dismissed.



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**ORDER:** The appeal is dismissed.