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

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

H5

DATE: DEC 28 2011 Office: SANTA ANA, CA FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santa Ana, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Iran who 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). He is the spouse of a U.S. citizen. 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 Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on April 15, 2010.

On appeal, counsel for the applicant asserts that the Field Office Director erroneously applied a higher standard than establishing extreme hardship to a qualifying relative, and that the Field Office Director erred by not considering the hardship impacts in the aggregate. *Form I-290B*, received May 14, 2010.

Section 212(a)(6)(C) Misrepresentation, 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 director found the applicant inadmissible under section 212(a)(6)(C) of the Act for having made misrepresentations regarding his marital history. The record supports this finding, and the AAO concurs that this misrepresentation was material. The applicant has not disputed his inadmissibility on appeal. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

The record contains, but is not limited to, the following evidence: briefs from counsel; statements from the applicant, the applicant's spouse, friends and family members of the applicant and his spouse; educational records for the applicant's spouse; country conditions materials on Iran, including periodicals discussing social customs and human rights incidents; two psychological evaluations of the applicant's spouse by [redacted] M.F.T., dated May 5, 2010 , and August 4, 2010; medical records pertaining to the applicant's spouse's parents; a statement from [redacted], M.D., dated August 5, 2010; and educational records for the applicant.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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 the applicant or his 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-Moralez,* 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.

Counsel asserts the applicant's spouse would not be able to find employment or continue her education if she were to relocate to Iran because of cultural bias against her chosen field of study. *Brief in Support of Appeal*, received May 14, 2010. Counsel also asserts that the applicant's spouse would be exposed to dangerous conditions because the applicant resides in a border area experiencing armed conflict, and cites to a U.S. travel warning from the U.S. Department of State. Counsel asserts the applicant's spouse would also experience discrimination because she is American.

The applicant's spouse asserts that she is attending junior college in California and that relocating to Iran would disrupt her current educational program, that it would be impossible for her to find a job, that she would live in fear of her life and that she has United States citizens family members in the United States. *Statement of the Applicant's spouse*, dated July 30, 2010. The applicant's spouse asserts that she suffers from a medical condition, and periodically has a Pilonidal cyst drained. She asserts that her father has a history of bladder cancer and needs to be monitored, and that her mother is under medical care for vitreous floaters and early glaucoma.

While the record contains evidence that the applicant's spouse's parents have medical conditions, there is nothing which indicates these conditions are not being controlled, or that her parents are

unable to care for themselves. There is no evidence that the applicant's spouse is providing the care for her parents, or that other family members would be unable to provide any assistance necessary for her parents. Nonetheless, the AAO recognizes that her elderly parents are a significant community tie. Based on the evidence in the record, including medical records, the AAO accepts that the applicant's spouse has a medical condition requiring periodical surgery to drain a cyst. However, the record does not support that the applicant's spouse would be unable to obtain this treatment upon relocation to Iran, or that the condition impacts her to a degree that resulting in uncommon physical hardship.

The AAO notes the country conditions materials in the record. The AAO also notes that the U.S. Department of State has issued a Travel Warning for Iran, dated October 21, 2011. The Travel Warning states, in pertinent part:

> Some elements in Iran remain hostile to the United States. As a result, U.S. citizens may be subject to harassment or arrest while traveling or residing in Iran. Since 2009, Iranian authorities have prevented the departure, in some cases for several months, of a number of Iranian-American citizens, including journalists and academics, who traveled to Iran for personal or professional reasons. Iranian authorities also have unjustly detained or imprisoned U.S. citizens on various charges, including espionage and posing a threat to national security. U.S. citizens of Iranian origin should consider the risk of being targeted by authorities before planning travel to Iran.

The AAO notes that the applicant's spouse has resided in the United States since the age of seven and that her immediate family members reside in the United States. In addition, the AAO notes the applicant's spouse's concerns regarding being separated from her elderly parents. When considering these factors along with the security situation in Iran and the normal results of relocation, the AAO finds that the applicant has established that she would experience extreme hardship should she relocate to Iran.

The applicant's spouse asserts that, upon separation, she would experience emotional and financial hardship. *Statement of the Applicant's Spouse*, dated July 30, 2010. The applicant's spouse states that the applicant is a trained Veterinarian in Iran and that allowing him to certify as such in the United States would provide her needed financial support.

The AAO notes that the applicant's spouse is currently residing with her parents, indicating that her parents are able to mitigate the financial impact of the applicant's departure. In conjunction with this, the record lacks sufficient evidence to establish what amount, if any, the applicant has been contributing to his spouse's welfare. It is noted that the record reflects that the applicant is licensed as a veterinarian in Iran and thus may be able to provide financial assistance to his spouse from Iran if any assistance is needed. In addition, being unable to attend college and having to find employment to meet financial obligations is not considered to be an uncommon hardship factor. There is no evidence that the applicant's spouse is unable to meet her financial obligations, that the applicant has been providing any financial assistance to his spouse, that the applicant's spouse has

accumulated any debt or is experiencing credit problems or that she would be unable to rely on family members to help mitigate the impact of the applicant's departure. Based on these observations the record fails to establish that the applicant's spouse will experience any uncommon financial hardship due to separation.

The record includes a psychological evaluation from [redacted]. [redacted] discusses the applicant's spouse's background and concludes that she suffers from Major Depression Disorder, Single Episode, and Generalized Anxiety Disorder. [redacted] also recommends that the applicant's spouse be psychiatrically evaluated to determine whether or not the applicant's spouse would need medication to control her condition, and advises that the applicant's spouse seek routine counseling to help her cope with her condition. The record also contains a letter from [redacted] dated August 6, 2010. The letter states that the applicant's spouse visited [redacted] on one occasion. [redacted] does not explain the nature of the evaluation or testing conducted on the applicant's spouse. However, [redacted] concludes that the applicant's spouse "suffers from severe depression and anxiety" and recommends therapy and medication evaluation. The record does not indicate that the recommendations or [redacted] or [redacted] were followed. The record does not contain any other evidence related the applicant's spouse's mental condition, nonetheless, the AAO will give some consideration to [redacted] conclusion when aggregating the impacts on the applicant's spouse upon separation.

The AAO acknowledges that the applicant's spouse will experience emotional hardship if she remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, even when combined with other hardship factors, will be extreme.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.