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

U.S. Citizenship and Immigration Services

[redacted]

H5.

DATE: DEC 05 2012 OFFICE: PANAMA CITY, PANAMA FILE [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]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Guyana who sought to procure admission into the United States by using the Transit Without a Visa (TWOV) program to travel to the United States to apply for asylum. He 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 seeking to procure admission to the United States through misrepresentation. The applicant is the son of a U.S. citizen and is the beneficiary of an approved 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 return to the United States to reside with his U.S. citizen parent.

The Field Office Director concluded that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and that the applicant failed to establish that the bar to admission would impose extreme hardship on his U.S. citizen mother, the qualifying relative, and denied the application accordingly. *Decision of Field Office Director,* dated November 26, 2010.

On appeal, counsel submits a brief, an affidavit from the applicant's mother, medical records for the applicant's mother and sister, a previously submitted psychological evaluation of the applicant's mother prepared by [redacted] PsyD, and the 2009 U.S. State Department Human Rights Report for Guyana.

The record also includes, but is not limited to, a hardship statement from the applicant's mother and sister, and medical documents for the applicant's mother and sister. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, which provides that:

> 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)(1) of the Act provides, in pertinent part:

> The [Secretary of Homeland Security] may, in the discretion of the [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 resident spouse or parent of such an alien....

Counsel asserts that there is no evidence that the applicant procured admission to the United States through fraud or misrepresentation. In the present case, the record clearly reflects that the applicant traveled to the United States under the TWOV program with no intention of transiting to a final destination. In an August 17, 2002 sworn statement before an immigration officer at the Miami International Airport, the applicant admitted that he intended to remain in the United States, apply for asylum and live with his mother. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to procure admission to the United States through misrepresentation. *See U.S. v. Kavazanjian,* 623 F.2d 730, 738 (1st Cir. 1980) ("aliens, by arriving as TWOV's with no intention of effecting an orderly and expeditious departure were guilty of fraud or misrepresentation").

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. The applicant's qualifying relative for a waiver of his inadmissibility is his U.S. citizen mother. 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,* 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 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 v. I.N.S.*, 138 F.3d *1292 (9th Cir. 1998) (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 record contains references to hardship the applicant's sister would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's siblings as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's parent is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's sister will not be separately considered, except as it may affect the applicant's parent.

On appeal, counsel states that the applicant's mother will suffer medical and financial hardship upon relocation to Guyana. The record, in the aggregate, establishes that the applicant's mother will suffer extreme hardship upon relocation to Guyana. The relevant evidence shows that the applicant's mother is 53 years old, suffers from diabetes, hypertension, hyperlipidemia and asthma, and will require medical follow-up visits. The applicant's mother's medical records indicate that she takes nine different medications for her illnesses while the applicant's sister's medical records indicate that the applicant's sister takes three different medications to treat her seizure disorder. The applicant's mother is the primary caregiver for the applicant's sister and works nights to support herself and her daughter who is unemployed. The applicant's mother

states that the applicant is unable to provide for his household's needs from his small salary as a welder. The minimum wage in Guyana is $170 per month and does not provide a decent standard of living for a worker and his family, according to the 2009 U.S. State Department Human Rights Report for Guyana. With a low minimum wage in Guyana, the applicant's mother will experience difficulty providing for the extensive medical needs of herself and her daughter upon relocation. When considered in the aggregate, the record demonstrates that the applicant's mother's hardship would rise above the distress normally created when families relocate as a result of inadmissibility or removal. The applicant has established that his mother would experience extreme hardship if the waiver application is denied and the applicant's mother relocates to Guyana.

On appeal, counsel claims that the applicant's mother suffers extreme emotional and financial hardship due to separation from the applicant. The record, in the aggregate, does not establish that the applicant's mother will suffer extreme hardship as a result of separation from the applicant. Regarding emotional hardship, the applicant's mother states that she loves her son very much, finds it difficult to live so far away from him, and that due to their separation, she is depressed and anxious. The record contains a letter of evaluation from a psychologist prepared on September 1, 2009, demonstrating that the applicant's mother was suffering from anxiety and depression and opining that the symptoms were a result of separation from the applicant. *Letter from* [redacted] *PsyD,* dated September 1, 2009. However, the new medical records submitted by counsel on appeal do not show follow-up visits or treatment for these conditions. In her letter, the applicant's mother's medical doctor does not address these psychological conditions and their impact on the applicant's mother's health. *Letter from Dr.* [redacted] dated January 24, 2011. The applicant's mother claims that the applicant will help her cope with providing for his sister's medical needs as well as her own. However, the record does not indicate that this support is necessary or that no other family member is able to support the applicant's mother. To the contrary, according to Mr. [redacted] the applicant's other sister also lives in Queens, New York.

Regarding financial hardship, the applicant's mother claims that the applicant's presence in the United States is needed for financial support. However, the record does not include financial records for the applicant's mother showing total household income and expenses. The applicant has also failed to demonstrate that the applicant has been providing financial support to his mother since he returned to Guyana from the United States in 2003.

The applicant's mother further claims that she suffers physical hardship as a result of separation from her son. The applicant's mother explains that her son would be able to drive her and her daughter to purchase groceries and at present, it is difficult on the bus. She further explains that the applicant will be able to help her maintain the house, and get to doctors' visits for herself and her daughter. The applicant's mother's or sister's medical records do not address their physical limitations and the record does not establish that the absence of the applicant's physical support constitutes extreme hardship.

The record lacks sufficient evidence demonstrating that the emotional, financial, physical or other impacts of separation on the applicant's mother are in the aggregate above and beyond the

hardships normally experienced, such that the applicant's mother would experience extreme hardship if the waiver application is denied and she is separated from the applicant.

Although the applicant has established that his mother would suffer extreme hardship upon relocation to Guyana, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. 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 to his qualifying relative from separation, we cannot find that refusal of admission would result in extreme hardship to his qualifying relative.

The applicant has failed to establish extreme hardship to his U.S. citizen parent, as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.