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

U.S. Citizenship and Immigration Services

[redacted]

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DATE: DEC 17 2012 OFFICE: NEWARK, NJ 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 Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the Field Office Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Burkina Faso, 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 procuring a U.S. visa by willfully misrepresenting a material fact. The applicant is married to a U.S. citizen, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his spouse and son.

In a decision dated June 15, 2011, the director concluded the applicant had failed to establish that his spouse would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly.

Counsel asserts on appeal that the director's decision was erroneous and that evidence establishes the applicant's wife will experience extreme hardship if the applicant is denied admission into the United States.

Counsel indicates on the Form I-290B, Notice of Appeal or Motion, that a brief or additional evidence will be submitted to the AAO within 30 days of filing the appeal. The AAO has received no additional brief or evidence as of the date of this decision; therefore the record is considered complete. Previously submitted evidence in the record consists of an unsigned letter and addendum, medical evidence, financial documentation and photographs. 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 that:

> (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.

The record reflects that in November 2010, the applicant testified under oath that he falsely stated on his nonimmigrant visa application that he was married and had three children in Burkina Faso to obtain a U.S. visitor visa in September 2006. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for procuring a U.S. visa by willfully misrepresenting a material fact. Counsel does not contest the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act states:

> The Attorney General [now, Secretary, Department 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.

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. *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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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).

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, 1293 (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 applicant's U.S. citizen spouse is his qualifying relative under section 212(i) of the Act.

The applicant's wife states in an unsigned letter that the applicant is her husband and friend, and it would cause her emotional pain if he returned to his country. She states the applicant took care of her son while she attended college to become a certified nurse's aide, he cares for her son when she works, and he takes her son to and from school. He also does small jobs to help her pay their bills.

According to an unsigned "addendum," the applicant's wife suffers from "serious asthma attacks" and the applicant monitors her breathing at night. The applicant also takes care of their son, which allows his wife to work overtime, and if he were unable to do so, his wife would have to go on welfare.

Medical evidence confirms the applicant's wife suffers from recurrent asthma. Employment evidence reflects the applicant's wife works approximately 37 hours a week as a nurse's aide, and that she works overtime hours "as available and agreeable."

Upon review, the AAO finds the evidence in the record, when considered in the aggregate, fails to establish the applicant's wife would experience hardship that rises above the common results of removal or inadmissibility if the applicant were denied admission and she remained in the United States. The record lacks evidence to corroborate assertions that they have a son, that the applicant's wife depends on the applicant to care for him, and that she would be unable to continue working without the applicant's assistance. The evidence in the record also fails to

establish that the applicant's wife depends on the applicant to monitor her asthma or that her health would be affected if the applicant moved to Burkina Faso and she remained in the United States. The evidence additionally fails to establish that the applicant's wife would experience emotional hardship beyond that normally experienced upon removal or inadmissibility of a family member if the applicant were denied admission into the country and she remained in the United States.

The cumulative evidence also fails to establish that the applicant's wife would experience extreme hardship if she moved to Burkina Faso to be with the applicant. No such hardship claims are asserted on appeal, and the record lacks any evidence to establish such hardship to the applicant's wife in Burkina Faso.

Because 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 an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *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.