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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

H5

[redacted]

Date: JAN 09 2012 Office: PHILADELPHIA, PA 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 must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania, and 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 Guyana 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), for procuring admission to the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a United States citizen and is the father of two United States citizen children. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse and children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 23, 2009.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Service (USCIS) "provided boilerplate discussions of some substantial evidentiary presentation." *Form I-290B*, filed October 15, 2007. Counsel claims that "[t]here is ample medical evidence of a combination of acute illnesses including hypertension and diabetes" for the applicant's wife. *Id.* Additionally, he claims that there is evidence of the applicant's wife's "treatment for depression." *Id.*

The record includes, but is not limited to, counsel's brief in support of the Form I-601, statements from the applicant's ex-wife, medical documents for the applicant's wife, guardianship documents, insurance documents, employment verification documents for the applicant and his wife, pay stubs for the applicant's wife, and marriage and divorce documents for the applicant. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (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 Act is inadmissible.
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> . . . .
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

> (i) (1) The Attorney General [now the 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 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...

In the present case, the record indicates that the applicant entered the United States by presenting a fraudulent passport. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

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 of Immigration Appeals (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.

In counsel's undated appeal brief, counsel states the applicant's wife "suffers from diabetes and depression." In a statement dated May 26, 2009, licensed social worker [redacted] states the applicant's wife "is being treated for situational anxiety and depression," and she takes medication "to assist with sleep disturbance." In a statement dated May 20, 2009, [redacted] states the applicant's wife is being treated "for insulin dependent diabetes." Additionally, counsel claims that the applicant's wife is "under medical care for chronic lower back pain." In a note dated June 2, 2009, [redacted] states the applicant's wife had an appointment for her lower back pain on that day. The AAO notes that there is no documentation in the record establishing that the applicant's wife cannot receive treatment for her medical conditions in Guyana or that she has to remain in the United States to continue her treatments. Additionally, counsel states the applicant "supports two children from a prior marriage." Counsel also states the applicant's wife "has become the legal guardian of three U.S. Citizen children whose parents are legally incapable of caring for them." The AAO notes that the record establishes that on August 22, 2007, the applicant's wife became the guardian of her niece, [redacted] who will be seventeen (17) years old in January 2012; and on August 21, 2007, she became the guardian of her nieces, [redacted] who is eighteen (18) years old, and [redacted] who will be eighteen (18) years old in February 2012. The AAO notes that other than the guardianship documents, there is no supporting documentary evidence establishing that the applicant's wife is caring for her nieces.

However, the AAO acknowledges that the applicant's children and nieces may suffer some hardship in being separated from the applicant and his wife. The AAO notes that the applicant's children and nieces are not qualifying relatives, and the applicant has not shown that hardship to his children and nieces will elevate his wife's challenges to an extreme level. However, the AAO notes the concerns for the applicant's children and nieces. Additionally, the AAO notes the applicant's wife's concerns regarding the difficulties she would face in relocating to Guayana.

The AAO acknowledges that the applicant's wife is a citizen of the United States and that she may experience some hardship in joining the applicant in Guyana. However, the AAO notes that the record does not contain documentary evidence, e.g., country conditions reports on Guyana, that demonstrate that the applicant's wife would be unable to obtain employment upon relocation that would allow her to use the skills she has acquired in the United States. Additionally, as noted above, there is no evidence in the record to establish that the applicant's spouse would be unable to receive any necessary medical care in Guyana. Nor is there evidence of any other hardships the applicant's spouse may experience as a result of relocation to Guyana. Therefore, based on the record before it, the AAO finds that, even considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Guyana.

In addition, the record also fails to establish extreme hardship to the applicant's wife if she remains in the United States. As noted above, the record establishes that the applicant's wife suffers from diabetes, depression, and lower back pain. [redacted] indicates that if the applicant's wife "was to separate from [the applicant], it would cause emotional and mental hardship to her." Counsel states the applicant's wife's lower back pain "has rendered her unable to work for the foreseeable future." The AAO notes that the record establishes that the applicant's wife had an appointment for her low back pain on June 2, 2009; however, the submitted disability certificate/work excuse indicated that the applicant's wife could return to work on the same day. *See disability certificate/work excuse*, dated June 2, 2009. However, the AAO notes the medical and mental health concerns of the applicant's wife.

As noted above, counsel states the applicant "supports two children from a prior marriage." In a statement dated June 5, 2009, the applicant's ex-wife states the applicant provides "monthly support for [their children]" and she would suffer financial hardship if she had to support the children alone. She also states that her children "would suffer emotionally." As noted above, the AAO acknowledges that the applicant's children may suffer some hardship in being separated from the applicant; however, the AAO notes that his children are not qualifying relatives, and the applicant has not shown that hardship to his children will elevate his wife's challenges to an extreme level. Additionally, as noted above, the record establishes that the applicant's wife has become the legal guardian of three children. Counsel states that the applicant's wife "has no relatives in the United States capable of replacing [the applicant]." The AAO notes the concerns of the applicant's children and nieces.

The AAO acknowledges that the applicant's wife may suffer some emotional problems in being separated from the applicant. However, the AAO notes that while it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished his wife's emotional hardship upon separation from that which is typically faced by the spouses of those

deemed inadmissible. With respect to the applicant's spouse's medical hardship, although the record establishes that the applicant's spouse has lower back pain, there is no evidence in the record establishing that she is unable to work. Additionally, the AAO notes that the applicant's wife has diabetes; however, the record does not establish that separation from the applicant would elevate her symptoms, that she depends on the applicant's assistance because of her medical condition, or that she relies on the applicant's health insurance. The AAO finds the record to include some documentation of the applicant and his wife's income and expenses; however, this material offers insufficient proof that the applicant's wife will be unable to support herself in the applicant's absence. Additionally, the applicant has not distinguished his wife's financial challenges from those commonly experienced when a family member remains in the United States alone. Further, the AAO notes that the applicant has submitted no evidence to establish that he would be unable to obtain employment in Guyana and, thereby, financially assist his wife from outside the United States. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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.