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

[redacted]

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DATE: OCT 2 3 2012 Office: NEW YORK (GARDEN CITY) 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York, 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 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 attempting to procure admission to the United States through fraud or misrepresentation. The applicant 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 to remain in the United States with his United States citizen spouse.

In a decision dated September 2, 2010, the district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated September 2, 2010.

On appeal counsel for the applicant asserts the district director failed to address factors specific to the applicant's case and failed to support its findings. In support of the appeal, applicant submits a brief from counsel; two psychosocial reports from a licensed clinical social worker; statements from the applicant, the applicant's spouse, and the applicant's children; a bank transaction journal for the applicant's business; country information about Guyana; letters of support from colleagues of the applicant; and a joint bank statement for the applicant and spouse.

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

> (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.

Section 212(i) of the Act provides that:

> The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 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 Attorney General [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.

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. The applicant's wife 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.

In the brief counsel notes, as does the applicant's spouse, that if the applicant is removed his spouse will return with him as her Hindu tradition dictates. Counsel goes on to note that the qualifying spouse's remaining family, including children and four siblings, live in the United States and she has no close family remaining in Guyana as her parents, two siblings, and former spouse are deceased. Counsel, the applicant's children, and the psychosocial report point out that in 2009 the spouse and three daughters visited Guyana where impoverished conditions caused illness, including fever, diarrhea, and vomiting, and that there was no proper medical care. Counsel asserts that if the applicant's spouse were to return to Guyana with the applicant she would take their three daughters, who would all then face substandard medical care and a lack of basic facilities as well as concern for their security. In his statement the applicant states there is no electricity or hospital in the area of Guyana where he would reside.

With the appeal the applicant submits Department of State reports on Guyana indicating that violence against women is widespread as is abuse of minors. Counsel states that the applicant's spouse fears violence, as a brother was murdered in Guyana, as well as poor medical care. Counsel further points out that country reports show there is no protection again gender discrimination in the workplace.

The psychosocial report refers to Guyana as economically devastated while noting the Department of State warns that serious crime is a major problem, with local law enforcement not having the resources to respond effectively. The report states that that the applicant and spouse have expressed fears of violence and crime in Guyana.

Counsel states that the applicant's spouse is a home health aide, a job that provides important health care benefits for her and children. Counsel contends that with low wages in Guyana the applicant and his spouse, having no high school education, will earn minimum wages, thus not earning enough to support their children or help them on to professional careers.

The applicant has established that his qualifying spouse would suffer extreme hardship were she to relocate to Guyana to reside with the applicant. Were the applicant to relocate with the applicant she would give up employment that supports her children and provides medical coverage, and were the children to accompany their mother they would experience poor health conditions, creating additional hardship for the applicant's spouse. Though the applicant's spouse is a native of Guyana, her immediate family is in the United States with no family remaining in Guyana. The AAO thus concludes that were the applicant's spouse to relocate to be with the applicant she would suffer extreme hardship.

The applicant also claims his spouse will suffer extreme hardship were she to remain in the United States without him due to his inadmissibility. Counsel asserts and the psychosocial report notes that the spouse's first husband was abusive, making the bond with applicant more significant. They also point out that with the spouse's parents, two brothers, and first husband deceased the applicant has provided security for her. Counsel states that the spouse experienced depression, anxiety, lack of sleep and loss of appetite while separated during the applicant's three-month detention in 2009. Counsel also notes that while the applicant's spouse could travel to Guyana to visit the applicant, international travel is costly.

The two psychosocial reports by a licensed clinical social worker provide background information of the applicant and spouse. The reports state that the spouse is dependent on the applicant as she grew up with hardships and she feared she would always suffer sadness and fear. The reports point out that the spouse's first husband was violent and abusive, but that she claims no residual depression because the applicant has provided security and brought happiness. The reports note the spouse stated that she felt overwhelmed providing alone for the children and that she suffered depression while the applicant was detained and that if the applicant were removed the spouse would be overwhelmed and devastated. The reports note the strong emotional bond between applicant and spouse and that the applicant has his own business where the spouse's sons work.

In a letter the applicant's spouse states that the applicant provides love and respect after her first husband was abusive. Letters from the applicant's children state they need the applicant for financial and emotional support to accomplish their goals in education and work, and that he brings happiness to family.

In his statement the applicant states that he owns a plumbing business assisted by his spouse's sons, but they cannot operate the business on their own. He states that he and his spouse own a home where they together pay mortgage expenses and provide for five children. He states that his business keeps the sons employed and out of potential trouble, but that while he was detained in 2009 the sons tried unsuccessfully to continue his business. He further notes that while detained he feared losing their home and that at that time his spouse worked two jobs with no time to care for kids. The applicant's spouse states she cannot cover expenses without the applicant.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The psychosocial reports provide significant detail about the applicant's family situation, but offer no actual diagnosis for the applicant's spouse. They indicate she feels overwhelmed by caring alone for the children, but do not suggest any treatments in the event the applicant is removed with his spouse remaining in the United States.

Counsel, the applicant, and spouse contend the applicant's spouse cannot meet mortgage payments without the applicant, but other than a bank journal of the applicant's business and one joint bank statement have not submitted any documentation establishing the applicant's spouse's current

expenses, assets, and liabilities or her overall financial situation to establish that without the applicant's physical presence, his spouse will experience financial hardship. Therefore the AAO cannot determine the overall impact of the applicant's removal on the financial situation of the applicant's spouse.

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 separation and the scenario of relocation. 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 in this case.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his qualifying spouse 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 application for waiver of grounds of inadmissibility, 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.