(b)(6)

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

U.S. Citizenship and Immigration Services

DATE: APR 17 2013 Office: ACCRA, GHANA FILE:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a request 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,

for Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Cameroon 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 having attempted to procure a visa to the United States through fraud or misrepresentation. The applicant is the fiancée of a U.S. citizen and is the beneficiary of an approved Form I-129F, Petition for Alien Fiancé(e). She 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 her U.S. citizen fiancé.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to her fiancé and denied the application accordingly. *See Decision of Field Office Director*, dated August 16, 2012.

On appeal, the applicant's fiancé states that he will suffer extreme hardship if he is forced to join the applicant in Equatorial Guinea, where she currently resides. He states that he has a medical condition which prevents his kidneys from producing a certain enzyme, and that he must attend regular doctor's appointments until the issue is resolved. Additionally, he states that if he were to relocate he would be forced to quit his job and would lose his healthcare benefits. He also indicates that if the applicant were able to join him in the United States, they would be able to get married and have children. He asserts that he would be unable to provide healthcare, a high quality education, and a good income for his future children if he were living in Equatorial Guinea.

The documentation in the record includes, but is not limited to: statements from the applicant and her fiancé, employment records, financial records, and documentation of the couple's relationship. 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:

> (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:

> (1) The [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.

The waiver is also available to the beneficiary of an approved K visa petition who demonstrates that refusal of admission to the United States would result in extreme hardship to her U.S. citizen fiancé, the K visa petitioner.

In the present case, the record reflects that in May 2011, the applicant submitted false employment records in connection with her application for a non-immigrant visa filed at the U.S. Consulate in Malabo, Equatorial Guinea. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure a visa to the United States through fraud or misrepresentation. She does not contest this finding of inadmissibility on appeal. She is eligible to apply for a waiver under section 212(i) of the Act as the beneficiary of an approved K visa petition.

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. Hardship to the applicant herself can only be considered insofar as it causes extreme hardship to her qualifying relative. 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 (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 U.S. 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. INS*, 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.

On appeal, the applicant's fiancé states that he and the applicant would be able to get married if she could join him in the United States. He also asserts that he has a good job with which would allow him to provide for the applicant and their future children. He contends that he has good health insurance and that he will also have a retirement plan, of which the applicant will be eligible to receive 50 percent after ten years of marriage. He also states that their future children would be able to receive a good education in the United States. He asserts that if the waiver application were denied, he would have to join the applicant in Equatorial Guinea. He states that he would be unable to provide for his family in Equatorial Guinea because he does not speak the language and would have trouble finding a job. He also contends that he would lose his health insurance and would be unable to take advantage of the benefits

provided by his employer and his military retirement. Finally, the applicant's fiancé states that he has a medical condition which prevents his kidneys from producing a certain enzyme. He alleges that he must attend six-month checkups and take medication until his kidneys start producing the enzyme on their own. He believes that he would be unable to continue his treatment in Equatorial Guinea.

The AAO finds that the applicant has failed to demonstrate that her fiancé will experience extreme hardship if the waiver application is denied. First, the applicant and her fiancé have focused their arguments on hardship her fiancé would experience if he were to join her in Equatorial Guinea. However, they have not discussed whether he would experience any hardship if he were to relocate with her to her native country of Cameroon. Neither the applicant nor the qualifying spouse is required to live in Equatorial Guinea. Additionally, the evidence is insufficient to establish that the applicant's fiancé would suffer extreme hardship even if he were to relocate to Equatorial Guinea. Although her fiancé claims that he suffers from a kidney condition for which he must receive regular medical treatment, there is no evidence in the record to support that claim. The applicant has not submitted any medical records to establish that her fiancé is under medical care or to document the severity of his condition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Additionally, while the applicant's fiancé claims that he would be unable to earn a living in Equatorial Guinea, there is no evidence in the record to support that claim. While he also worries that he and his future family would be deprived of the quality of education and healthcare that is available in the United States, inferior economic opportunities, education, or medical care is insufficient to establish extreme hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568 (BIA 1999).

Even if the applicant had demonstrated that her fiancé would experience extreme hardship on relocation, neither the applicant nor her fiancé have alleged that he would suffer extreme hardship if he remained in the United States without the applicant. As such, it has not been established that the applicant's fiancé would experience extreme hardship were he to remain in the United States without the applicant. 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 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. 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.