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

(b)(6)

[redacted]

DATE: APR 2 2 2013 Office: MOSCOW, RUSSIA 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 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,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Moscow, Russia, denied the waiver application, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the underlying application denied.

The applicant is a native and citizen of Armenia 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 attempting to procure admission to the United States through fraud or the willful misrepresentation of a material fact. She is the beneficiary of an approved Petition for Alien Relative (Form I-130), and 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 husband.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director,* August 17, 2010. On appeal, the AAO found that the applicant had failed to show that extreme hardship would be imposed on a qualifying relative by the applicant's inability to reside in the United States. *Decision of the AAO,* August 20, 2012.

In support of the motion, the applicant's counsel submits a brief asserting that USCIS erred in finding that the applicant's husband would not suffer extreme hardship without his wife in the United States, and provides new evidence, including a psychological evaluation; updated hardship statements and new support statements; an employer letter; remittance statements; and country condition reports. The record includes the supporting documents submitted with the Form I-601, the appeal of the waiver denial, and the current motion. The entire record was reviewed and considered in rendering this decision.

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

> 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:

> 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 record shows the field office director found that on March 11, 2002, the applicant attempted to enter the United States by presenting a U.S. refugee travel document in someone else's name and

was expeditiously removed the following day.[1] Based on this misrepresentation, the AAO found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act.

A waiver of inadmissibility under section 212(i) 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband is the only qualifying relative in this case.[2] If extreme hardship to either of them 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 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

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[1] As more than five years have elapsed since March 12, 2002, the applicant is no longer inadmissible under section 212(a)(9)(A)(i) of the Act.

[2] The record reflects that the applicant's parents are present in the United States pursuant to a grant of withholding of removal and thus lack the requisite status to be qualifying relatives.

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.

Regarding hardship from relocation, the applicant contends that moving to Armenia would impose extreme hardship on her naturalized U.S. citizen husband. The record reflects that, although of Armenian parentage, he was born in Beirut, Lebanon, moved to the United States with his parents at the age of 10, naturalized in 1999, and visited his parents' homeland for the first time when he traveled to Armenia to meet the applicant in September 2007. He reports that, aware of his wife's inadmissibility, he tried to find work to remain in the country, but after encountering discrimination for being a foreigner and for having poor knowledge of the Armenian language, he left. Country condition information confirms that the country has a developing economy and high unemployment, but there is no evidence of the qualifying relative's job search efforts. The record also lacks documentation of his U.S. income, only that showing he had been employed for one month when his most recent employer wrote a support letter listing his current salary as "2,000."[3] When he filed an Affidavit of Support (Form I-864) in 2009, the applicant's husband provided no documentation for the $15,000 annual income as a jeweler claimed, stating only that he earned too little to have to file a tax return.

While lacking ties to his wife's country and familiarity with local customs and practices, the applicant's husband reports that his parents and all three of his siblings are U.S. citizens living in the United States, and he claims to be the sole caregiver to his parents, who live with him. The record shows that both parents have arthritis and high blood pressure, as well as mobility issues, but there is no indication of their specific treatment or care needs, nor is there documentation showing he supports them financially or any explanation why his siblings could not undertake the same care/support role he provides. While a psychologist has diagnosed the applicant's husband with major depression and anxiety and suggests that his mental health is too fragile for him to relocate to

[3] It is uncertain whether this is a monthly salary figure and there is no documentation in the record of income received.

Armenia, the record contains no specifics regarding how long he has received mental health services or how therapy has helped him cope. Further, there is no indication that these services would not be available overseas, and we observe that, as the report also concludes that the qualifying relative "would benefit greatly from his wife's presence and emotional support," reuniting with his wife would remove the stress of her absence. *Psychological Evaluation*, September 12, 2012. Although the therapist notes that the qualifying relative has fears about his wife's safety, there is no substantiation that she has received threats or been the victim of violence. The transcript of her expedited removal interview reflects that she denied having any fear or concern about returning to Armenia, stated that she would not be harmed, and indicated that nothing would happen upon her return except that she would resume her studies. *See Record of Sworn Statement in Proceedings under section 235(b)(1) of the Act (Form I-867AB),* March 12, 2002. Similarly, although his wife's parents contend that her husband would encounter personal security risks in Armenia due to his marriage to their daughter, there is no evidence that he was ever threatened while living there or would be subject to any safety problems if he returned. Official U.S government reporting notes no special danger to U.S. citizens ("Crime against foreigners is relatively rare in Armenia. Break-ins -- particularly of vehicles -- and theft are the most common crimes, [and] the incidence of violent crime remains lower than in most U.S. cities…"). *See Armenia—Country Specific Information,* Department of State (DOS), November 15, 2012.

The AAO is sensitive that relocation to Armenia would involve significant lifestyle changes, and recognizes that the applicant's parents have expressed concerns about their son-in-law's safety, but observes that he seriously considered living there when visiting the country. The applicant has provided insufficient evidence for us to find the hardship her husband would experience by relocating to Armenia would amount to hardship that is beyond the common or typical result of removal or inadmissibility of a loved one. The applicant has thus not met her burden of establishing that a qualifying relative would suffer extreme hardship were he to relocate abroad to reside with the applicant due to his inadmissibility.

Regarding separation, the applicant's husband contends that his wife's absence has caused him emotional hardship. The psychologist who diagnosed his depression and anxiety listed symptoms including sadness/crying, irritability, headaches, panic attacks, insomnia, and lack of motivation, and attributed many of these problems to worry about the applicant's immigration problems. *See Psychological Evaluation,* September 12, 2012. The report concludes that allowing his wife to reunite with him would alleviate the cause of much of his distress. Although the AAO recognizes he is experiencing hardship due to separation from his wife, the report does not indicate that he is experiencing hardship beyond the common results of separation. Due to lack of financial documentation discussed below, the record fails to substantiate the claim that he has been unable to visit his wife abroad due to the expenses involved.

Counsel states that the qualifying relative's elderly parents, ages 65 and 78, live with him and are financially dependent upon him. There is no documentation of their son's earned income or of any financial resources his parents bring to the household. The record reflects that the applicant is unemployed, but gives no indication of her work history or efforts to find a job. Although the applicant's husband provides substantial documentation of periodic remittances to his wife ranging from $100 to $700, there is no documentation of his other expenses here or his wife's expenses in

Armenia. The applicant offers no explanation how she supported herself before marrying in November 2007. The information on record is thus insufficient for us to conclude that the applicant's absence imposes an economic hardship on her husband.

Coupled with the lack of evidence that the applicant's inadmissibility represents a financial hardship, the report regarding psychological issues reflects that the applicant has not established her husband is suffering and will continue to suffer extreme hardship if she cannot immigrate to the United States. The record does not show that the cumulative effect of the emotional and financial hardships the applicant's husband is experiencing due to her inadmissibility goes beyond the hardship normally imposed by the separation from a loved one. His family, friends, church, and healthcare providers comprise a support network here. The AAO thus concludes that, based on the record evidence, were the applicant's husband to remain in the United States without the applicant due to her inadmissibility, he would not suffer hardship that rises to the level of extreme.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's husband's situation, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law.

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 and, accordingly, the prior decision of the AAO will be affirmed.

ORDER: The motion is granted. The waiver application remains denied.