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

(b)(6)

[redacted]

Date: AUG 1 2 2013 Office NEW YORK, NY 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, NY, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the prior decision of the AAO affirmed.

The applicant is a native and citizen of Jamaica, 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 her U.S. citizen spouse.

The District Director found that the applicant failed to establish that her qualifying relative spouse would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the District Director* dated July 12, 2010.

On appeal the AAO determined that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The appeal was subsequently dismissed. *See Decision of the AAO,* dated October 11, 2012.

On motion counsel asserts there is new evidence of hardship to the qualifying relative. In support of the motion counsel submits a brief; affidavits form the applicant and spouse; a psychological evaluation for the applicant's spouse; medical documentation for the applicant's daughter; financial documentation; letters of support from family and friends; and country information for Jamaica. The entire record was reviewed and considered in rendering this decision.

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 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 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 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 U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. 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.

On appeal the AAO acknowledged that the applicant's spouse finds himself dependent on the applicant for certain daily activities, but found the difficulties that the applicant's spouse would face as a result of his separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law. The AAO further found that neither counsel nor the applicant noted any specific hardship the applicant's spouse would face were he to relocate to Jamaica to reside with the applicant and that the applicant had submitted nothing specific addressing her or her spouse's ability to support themselves in Jamaica.

On motion counsel asserts that the applicant's spouse needs the applicant in the United States for medical and financial reasons as he cares for his sister with kidney disease, is responsible for the health care of the applicant's daughter who had a gallbladder removed, and has his own medical consequences from a head trauma received in Jamaica. Counsel asserts that the spouse is overwhelmed with his duties to the family and the threat of the applicant's departure causes psychological changes and aggravated medical conditions, including headaches, dizziness, and blackouts. Counsel asserts that the applicant's spouse provides everyday care for his sister, including food, bathing, and paying bills, and can only do so with the applicant undertaking household duties. Counsel contends that if the applicant's spouse relocates to Jamaica he could not find work to support his family and pay debts in the United States. Counsel asserts relocating to Jamaica would also be an emotional hardship as the spouse's brother was killed and the spouse beaten by police there, the health care system would not accommodate his needs, he would be unable to support the applicant's daughter in college, and he would abandon the sister for whom he provides care.

On motion the applicant states that her spouse provides for his family and her daughter, and cares for his ill sister while struggling with money and his own health issues. She states her spouse has no family in Jamaica and has no one to look after him without her. The applicant's spouse states he left Jamaica following his brother's killing and has only returned to visit briefly on one occasion. He states that he had been beaten by police and still experiences health problems from it. The applicant's spouse states that all his family live in the United States or Canada, with his sister having

kidney disease relying on his support and care. He states that he has had the same job for 25 years, that without the applicant working he cannot afford his growing debt, and that there are no jobs available in Jamaica if he were to relocate. He states that he cares for his own youngest daughter and that the applicant's daughter, his step-daughter, had surgery and now depends on the applicant, but he does not believe he can provide that same care. He also states that he sees a doctor for his own headaches and dizziness.

A psychological evaluation states that due to potential separation from the applicant her spouse has a lack of interest, loss of appetite, increased irritability, fatigue, and trouble concentrating. It states the applicant helps her spouse cope with depression and that they share family values. The evaluation states that the spouse reported having once been struck on the head and that he believes it causes cognition and memory problems. The evaluation states that the spouse would suffer if he relocates to Jamaica given impoverished conditions, difficulty getting employment, exposure to violent crime, and that his brother had been killed there. The evaluation states the spouse has important family ties in the United States, especially the sister who relies on his care.

The AAO finds the record to establish that the applicant's spouse would experience extreme hardship if he were to relocate abroad to reside with the applicant due to her inadmissibility. He would have to leave his family, most notably his daughter, step-daughter, and sister for whom he provides care, while being concerned about safety and his financial well-being in Jamaica. As such, the record reflects that the cumulative effect of the qualifying spouse's family ties to the United States, his length of residence in the United States, his safety concerns, and loss of long-term employment were he to relocate abroad rises to the level of extreme.

The AAO finds, however, the record does not establish that the applicant's spouse would experience extreme hardship if he were to remain in the United States while the applicant resides abroad. The psychological evaluation states the applicant's spouse experiences depression due to the potential of separation from the applicant, but the record does not show how such emotional hardships are outside the ordinary consequences of removal. The spouse asserts that he is unable to care for the applicant's daughter following her gallbladder removal, but medical documentation on record does not show that the daughter's condition is such that her care creates a hardship for the applicant's spouse, thus requiring the applicant's physical presence in the United States. The applicant and her spouse also state that the spouse suffers health problems, but submitted no medical documentation to establish a health condition affecting the spouse or that any treatment would require the applicant's presence.

Counsel also asserts the applicant's spouse would suffer financial hardship if the applicant departs the United States. The spouse's affidavit contends he pays bills for his ill sister and college costs for the applicant's daughter, his step-daughter. The record contains credit card statements, showing one payment to the , and a list of estimated expenses compiled by the applicant's spouse. No documentation has been submitted, however, to show costs related to his sister's care or bills and statements for the college-related expenses the spouse states he pays. Further, no documentation has been submitted as evidence of the spouse's current income, expenses, assets, and

liabilities or overall financial situation, or to show any contribution made by the applicant, to establish that without the applicant's physical presence in the United States the applicant's spouse would experience financial hardship.

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.

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.

On motion the record does not support a finding that the applicant's spouse 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 or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships he would face rise to the level of "extreme" as contemplated by statute and case law.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion to reopen is granted and the prior AAO decision is affirmed.