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)

DATE: DEC 0 9 2013 Office: TAMPA File:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

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 Field Office Director, Tampa, Florida, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a 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 or attempting to procure a visa, admission, or other immigration benefit by fraud or misrepresentation. The applicant seeks a waiver of inadmissibility in order to immigrate to the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by his wife.

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 Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director,* May 24, 2013.

On appeal, counsel for the applicant contends that USCIS erred in finding the applicant inadmissible for making a willful misrepresentation, as well as for determining the applicant's wife would not suffer extreme hardship if her husband is unable to reside in the United States. The record contains documentation including, but not limited to: an appeal brief; an updated psychological assessment and medical letters; financial information, including bills, a bank statement, and a tax return; and country condition information. The record also contains extensive documentation submitted in support of the waiver application that is itemized in the denial, including, but not limited to: medical records, a psychological evaluation, supportive statements, identification documents, photographs, and country condition information. 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 the applicant inadmissible for procuring a visa and admission to the United States by fraud or misrepresentation of a material fact. The field office director found that he misrepresented his immigrant intent at his consular interview on January 24, 2012 in order to receive a B1/B2 nonimmigrant visa, he used the visa on February 5, 2012 to be

admitted in B2 status, and he married the person with whom he was staying on February 27, 2012.[1] By marrying within 30 days of admission and applying for permanent residence, the applicant is presumed to have intended to immigrate at the time he sought his nonimmigrant visa. *See* 9 FAM 40.63 N4.7-1 and 9 FAM 40.63 N4.7-2. Unless able to produce evidence to rebut this presumption, the applicant is deemed to have misrepresented his true intent in procuring his visa or when he presented himself for U.S. admission.

The record reflects that the applicant and his wife were introduced via the Internet in 2008 and began their relationship long distance through frequent contact by telephone, text messaging, and online platforms including Skype, MSN, and Facebook. His future wife visited him three times in Guyana during the latter half 2011 (the first time with her family and the other two times alone) during which time they became romantically involved, and the applicant traveled to the United States one month after his then girlfriend's return from her last Guyana trip. On the invitation of his future mother-in-law, he applied for a visa to come to the United States and listed her residence as his destination address. Instead of returning home at the end of February, as he claims was his original plan, the applicant filed for adjustment of status on April 5, 2013 concurrently with his wife's filing of a spousal immigrant petition on his behalf. As the applicant's actions undermine his claim he did not intend to marry and remain in the United States at the time he applied for his visitor's visa, he is unable to meet his burden under section 291 of the Act of proving he is not inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant thus requires a waiver of inadmissibility.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife is the only qualifying relative in this case. If extreme hardship 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is not exclusive. *Id.* at 566.

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[1] The record reflects that the couple applied for their marriage license on February 23, 2013, received a religious blessing on February 26, and married the following day.

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, while 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, or cultural readjustment 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, although 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)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

Regarding whether the applicant has established that a qualifying relative would suffer extreme hardship by relocating, the record reflects that the cumulative effect of problems that would impact his wife amounts to hardship that rises to the level of extreme. There is evidence the applicant's wife suffers from medical and psychological conditions requiring ongoing monitoring and treatment. Her treating physician states that she has a history of painful ovarian cysts, which may require surgical intervention to avoid complications with future pregnancy, as well as chronic low back pain and acid reflux disease for which she is taking several prescription medications. The doctor notes

that his patient is also taking a prescription sleep aid for insomnia attributed to depression and anxiety and an antidepressant and has twice been evaluated by a psychologist. U.S. government reporting indicates that medical care in Guyana does not meet U.S. standards, trained specialists are lacking, and hospitalization for surgery is problematic. *See Guyana—Country Specific Information,* U.S. Department of State (DOS), June 21, 2013. Documentation from a health official in the destination country states that appropriate treatments for the qualifying relative's conditions are not available or are cost prohibitive. Evidence indicates she faces potential loss of access to specialized surgical treatment and the insurance benefits to pay for it. The record shows that the applicant has strong U.S. ties, as her entire family immigrated here, and by becoming a naturalized U.S. citizen at the age of 18, she forfeited her Guyana citizenship. Besides health concerns, the record also supports the qualifying relative's concerns for her personal safety if she returns to Guyana, which she left when she was 12 years old. DOS reports noting that serious crimes, such as murder and armed robbery, are a major problem support the personal accounts of violent crime experienced by her grandmother and mother. In aggregate, the concerns for personal safety and economic security and limited access to adequate healthcare that the applicant's wife would experience upon relocating go beyond the common or usual consequences of inadmissibility or removal. The applicant thus establishes that his spouse would suffer extreme hardship by departing the country to live with the applicant abroad.

While noting that claims regarding potential emotional hardship due to separation are supported by a psychologist's evaluations, the AAO concludes that the impact on the applicant's wife does not exceed the typical consequence of inadmissibility or removal. A therapist diagnoses the applicant's wife with anxiety and depression due to the applicant's uncertain immigration status and her own fear of moving back to Guyana, but the record indicates she is receiving treatment and taking prescription medication to help her cope with symptoms. *See Psychological Evaluations,* October 15, 2012 and June 18, 2013. The assessments observe that the applicant's wife is saddened by the prospect of separation, but fail to offer a prognosis besides suggesting that her condition will improve if her husband is allowed to remain here. There is no documentary evidence that the applicant's wife is likely to experience any impact beyond the usual consequence of being separated from a spouse. The record shows that her relatives – grandparents, parents, siblings – and her local religious community comprise a strong emotional support network, and her history of travel indicates she is able to visit her husband of under two years to ease the pain of separation. While we are sensitive that separation from a spouse entails emotional hardship, there is insufficient evidence to establish that separation will cause the applicant's wife distress beyond the common or typical result of inadmissibility or removal.

Regarding financial hardship, documentation establishes that the applicant's 2012 earnings of $3,337 represent almost 12% of household income exceeding $28,000. The evidence shows the applicant's wife earned over $25,000 as an accountant, is valued by her employer, and plans to enhance her salary potential through further education. The evidence of expenses is insufficient to establish the applicant's departure will impose a financial burden on his wife, who continued residing with her parents after her marriage. The record indicates that the applicant was a bank employee in Guyana, and there is nothing to support his claim that this job or other work would be unavailable on his return or that he would be unable to support himself. Based on the record, the AAO is unable to

conclude that the applicant's inability to remain here will make his wife unable to meet her financial obligations.

For all these reasons, the cumulative effect of the emotional and financial hardships the applicant's wife will experience due to the applicant's inadmissibility does not rise to the level of extreme. The AAO concludes based on the evidence provided that, were his wife to remain in the United States without the applicant due to his inadmissibility, she would not suffer hardship beyond those problems normally associated with family separation.

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 in 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.

The documentation on record, when considered in its totality, reflects the applicant has not established that his spouse will suffer extreme hardship if he is unable to live in the United States. The AAO recognizes that the applicant's wife will endure hardship as a result of the applicant's inability to immigrate. However, her situation is typical of individuals affected by removal or inadmissibility, and the AAO thus finds that the applicant has failed to establish extreme hardship to his wife as required under the Act.

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 appeal is dismissed.