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: FEB 0 6 2013 Office: LOS ANGELES FILE:

IN RE : Applicant:

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:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Iran 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 U.S. citizen spouse and lawful resident mother.

The Field Office Director found that the applicant failed to establish that his qualifying relatives would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated November 27, 2009.

On appeal counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erred in finding the applicant's refusal of admission would not result in extreme hardship to his qualifying relatives as it did not consider factors in the aggregate. With the appeal counsel submits a brief; a declaration from the applicant's spouse; financial documentation for the applicant and his spouse; and country information for Iran. Counsel also notes that the denial by the Field Office Director determined that the applicant was applying for a waiver of inadmissibility under section 212(h) of the Act when he was actually applying for a waiver of inadmissibility under section 212(i). The record contains the previously-submitted brief from counsel with declarations from the applicant and his spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO notes that the applicant's application for a waiver of inadmissibility is pursuant to section 212(i) of the Act.

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:

> 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 U.S. citizen wife and lawful resident mother are the qualifying relatives 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. *Salcido-Salcido v. INS*, 138 F.3d 1292 (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.

Counsel asserts the applicant's refusal of admission will have a psychological, medical, and financial impact on his spouse and mother. Counsel contends that USCIS ignored the spouse's emotional and psychological problems and ignored the financial impact of the applicant's departure and refusal of admission on the spouse and mother. Counsel contends that the decision stated the applicant had not established a credible fear of return to Iran so he and his spouse would not be in danger there, but failed to acknowledge an Immigration Judge granted withholding of removal. In a previously-submitted brief counsel referred to Iran as being in economic and political turmoil with "appalling social, economic and political conditions."

In her declaration the applicant's spouse states she cannot imagine life without the applicant and that he is her only every day support. She states that waiting on the waiver delays her having children, but fears if she had children, they would suffer the same hardships as her. The spouse states that the applicant's situation is causing stress affecting her mentally, psychologically, and physically and she believes the stress can contribute to high blood pressure and lead to disability. The spouse states that she is suffering insomnia and depression affecting her work as a designer as she cannot concentrate. She states she needs her job to be financially stable and survive and that she would be unable to earn enough to support herself without the applicant as he is the breadwinner. She fears what will happen without the applicant's income, believing she will probably fall behind on payments, her credit will be ruined, and she may be forced to file for bankruptcy. She further states that the applicant's family is in the United States and that he financially helps his mother, who suffers depression and has a blood disorder and respiratory problems. The spouse states that the applicant makes sure his mother follows medical instructions.

The applicant's spouse further states she cannot live in a society like Iran because they hate the United States and she is not Muslim, does not know the customs and is not familiar with the language or culture. The applicant's spouse notes a fear of inadequate health care in Iran and states that she was born in United States with no family in any other country.

In his earlier declaration, the applicant stated that their lives will be devastated if the waiver is not approved. He stated that his spouse will suffer hardship, be miserable, and may enter deep depression. He also stated that he has always provided for his spouse but would be unable to support her from Iran. He stated that if his spouse leaves the United States she will lose contact with her family and that in Iran she would be criticized. The applicant stated that his mother, brother and sisters are lawful permanent residents of the United States.

The applicant has established that his U.S. citizen spouse would experience extreme hardship were she to relocate abroad to reside with the applicant. The record establishes that the applicant's spouse was born and raised in the United States, does not speak a language of Iran, is not familiar with the culture, and is not Muslim. If she were to relocate to Iran the applicant's spouse would be linguistically, culturally, and religiously isolated and away from her family with no support network. The U.S. Department of State has issued a 2012 travel warning for Iran in which in notes, in part:

> The Department of State warns U.S. citizens to carefully consider the risks of travel to Iran. Some elements in Iran remain hostile to the United States. As a result, U.S. citizens may be subject to harassment or arrest while traveling or residing in Iran. The U.S. government does not have diplomatic or consular relations with the Islamic Republic of Iran and therefore cannot provide protection or routine consular services to U.S. citizens in Iran. Our ability to assist U.S. citizens in Iran in the event of an emergency is extremely limited.

However, the AAO finds that the applicant has failed to establish that his qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. The applicant, counsel and the applicant's spouse assert the spouse will experience emotional hardship if separated from the applicant and the spouse further states the possibility of the applicant's waiver being denied affects her health and concentration at work. The record contains no supporting evidence concerning the emotional hardship the applicant's spouse states she is experiencing or would experience due to long-term separation from the applicant, or how such emotional hardship is outside the ordinary consequences of removal. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)).

Although the applicant was granted withholding of removal by an Immigration Judge in 2002, no updated information has been submitted to the record about any potential threat to the applicant's safety if he were to return to Iran. Therefore the AAO is unable to determine whether the applicant would face any threat to his life or freedom in Iran more than 10 years after he departed the country.

Counsel indicates that the applicant provides financially for his spouse and the applicant stated that he provides for her and would be unable to support her from Iran. The applicant's spouse states that she fears being unable to support herself without the applicant's income and states that the applicant is the "breadwinner". However, documents submitted with the I-485 *Application to Register Permanent Residence or Adjust Status* indicate the spouse in fact has the higher income. Although it

is recognized that the applicant's spouse may experience some financial difficulty without the applicant's contributing income, the record does not support that the applicant's spouse would suffer extreme hardship without the applicant's presence in the United States. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

Counsel and the applicant's spouse note hardship to the applicant's lawful resident mother should he be removed from the United States, however the record contains no documentation or statement from the applicant's mother as evidence of emotional or financial hardship either due to separation from the applicant or relocation to reside with the applicant in her native Iran. As noted above, going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)).

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 to his spouse 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 relatives, 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 or parent 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 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.