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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

DATE: FEB 13 2013 OFFICE: CHICAGO FILE: [redacted]

IN RE: [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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Lithuania 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 having procured admission to the United States through willful misrepresentation. The applicant is the husband of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, in order to remain in the United States to reside with his U.S. citizen wife.

The Field Office Director concluded that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and that the applicant failed to establish that the bar to admission would impose extreme hardship on his U.S. citizen wife, the qualifying relative, and denied the application accordingly. *Decision of Field Office Director,* dated March 9, 2012.

On appeal, counsel submits a brief and a copy of the previously submitted evidence filed in support of the applicant's waiver. The record also includes, but is not limited to: an affidavit from the applicant's wife, tax and financial records, business documents, an article on country conditions in Lithuania, school records for the applicant's children, medical records for the applicant's wife, and health insurance documents for the applicant's family. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, which provides that:

> 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, in pertinent part:

> The [Secretary of Homeland Security (Secretary)] may, in the discretion of the [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 [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....

U.S. Citizenship & Immigration Services (USCIS) records show that in order to procure admission into the United States, the applicant misrepresented that he was a member of a Lithuanian Judo team coming to the U.S. to participate in a competition. The applicant does not contest that he is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through willful misrepresentation.

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. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. citizen wife. 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 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 v. I.N.S.*, 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.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's qualifying relative.

The record does not establish that the applicant's spouse would experience extreme hardship in the event of separation from the applicant. Regarding financial hardship, the applicant's wife claims that she relies entirely on the applicant for financial support and that she would have no means of supporting herself upon his departure. The record includes tax returns and business documents that show that the applicant is self-employed and owns a trucking business from which he generates all of the family's income. The applicant's wife claims that if the applicant left the United States, they "would lose the business because [the applicant] is the business," yet she also states that the applicant "currently employs nine people." The record does not fully support her claim that the business could not operate in his absence. The record shows that the applicant's wife has not been employed since 2002 and last worked as a massage therapist, but the applicant's wife has not explained why she would not be able to regain employment.

Regarding emotional hardship, the applicant's wife states "I have been under medical treatment for the last two years for hypertension, headaches and chronic anxiety and taking medication. Part of this I think is caused by stress of not knowing what is to happen to us." The record includes a brief letter from Dr. [redacted] who states that the applicant's wife has been treated for hypertension, headaches and chronic anxiety for which she is taking antihypertensive and long-

term anti-anxiety medications. The letter further states that the applicant is his wife's social support and essential to her long-term well-being. However, Dr. [redacted] states that the applicant's wife has been treated for mental illness since May 2009, nearly three years before this waiver application was denied, which indicates that the applicant's inadmissibility did not cause or significantly aggravate her pre-existing conditions.

The record does not contain sufficient evidence to establish that the financial and emotional difficulties facing the applicant's wife rise to the level of extreme hardship in the event of separation from the applicant.

The record also does not establish that the applicant's spouse would experience extreme hardship if she were to relocate to her native Lithuania with the applicant. Regarding emotional hardship, the applicant's spouse expresses concern about her children's education in Lithuania especially since her children prefer to speak English and do not know how to read and write in the Lithuanian language. The record does not demonstrate, however, that any difficulties her children would face in adjusting to school in Lithuania would cause the applicant's wife to suffer extreme emotional hardship. The applicant's wife also claims that her family "cannot relocate back to Lithuania and have any type of life." While the record indicates that the applicant's wife has resided in the United States for over 13 years, has three children who were born in the United States and co-owns her home with the applicant, the record also shows that the applicant's wife is a native of Lithuania, has taught her children to speak Lithuanian and that her parents still reside in Lithuania.

Regarding financial hardship upon relocation, the applicant's wife is concerned that that applicant will be unable to financially support his family given the economic conditions in Lithuania. While the record shows that the estimated unemployment rate in Lithuania in 2011 was 17.9 percent, the record does not address the applicant's husband's individual employment prospects in Lithuania or his ability to start another business in Lithuania.

While emotional and financial difficulties are common results of inadmissibility, the evidence in this case does not establish that the applicant's wife would suffer extreme emotional and financial hardship in the event of relocation to Lithuania.

The applicant has failed to establish extreme hardship to his qualifying relative as required for a waiver of his inadmissibility 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 he merits a waiver as a matter of discretion.

In proceedings for a 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.