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)

DATE: FEB 28 2013 Office: DENVER 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 Field Office Director, Denver, Colorado, 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 citizen of Romania 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 seeking to procure a U.S. visa by fraud or misrepresentation.[1] The applicant seeks a waiver of inadmissibility in order to remain in the United States and reside with his U.S. citizen spouse.

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,* May 1, 2012.

On appeal, counsel contends the applicant has established that his inadmissibility would result in extreme hardship his wife. The record includes, but is not limited to, counsel's brief; supporting statements; a psychological evaluation; financial documentation, including tax returns, W-2 statements, and business records; copies of passports, birth, marriage, and professional certificates; birth and naturalization certificates; school records; and country condition information. The entire record was reviewed and all relevant information considered in reaching this decision.

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

> 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 that, in applying for a nonimmigrant visa on July 13, 2009, the applicant failed to disclose on his signed Nonimmigrant Visa Application (Form DS-156) having been arrested and convicted of a theft offense, and he was issued a B-1/B-2 visa, which he used to travel to the United States and procure admission on July 25, 2009. He was found inadmissible for having procured a visa and admission to the United States through fraud or misrepresentation of a material fact, and he thus requires a waiver of inadmissibility.

---

[1] A second ground of inadmissibility under section 212(a)(2)(i)(I) of the Act, for a crime involving moral turpitude, is not before the AAO on appeal, the applicant having been granted a waiver under section 212(h)(1)(A).

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 or his children 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 to her 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 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 Romania would impose extreme hardship on his wife. Her U.S. ties include roots in the community, a mother and four siblings, and four children between the ages of one and 15 who live with her. She is a working professional who uses her law and CPA licenses to generate income. The applicant's wife states she has never visited Romania and does not know the local language or customs, claims that her education and training would be worthless there, and asserts that her children would be adversely impacted by unsafe conditions in Romania. She also worries that a joint parenting plan entered into with her former husband would prevent one of her children from moving overseas and, thereby, split the family.

Although official U.S. government reporting does not substantiate the applicant's claims about deplorable conditions in his country, s*ee Romania—Country Specific Information,* Department of State (DOS), February 5, 2013, there is evidence that his wife has some basis to be concerned for her children's safety to the extent that the country "is a source, transit, and destination country for men, women, and children subjected to forced labor and women and children subjected to sex trafficking." *Trafficking in Persons Report 2012--Romania,* DOS, June 19, 2012. While the record reflects that her school age children are thriving here, it contains no indication the applicant or his wife has investigated their academic or extracurricular opportunities in Romania.

Documentation establishes that the qualifying relative's income from 2008 to 2010 ranged from $185,000 to $153,000, but she claims to have experienced diminution due to lifestyle-related cutbacks in work hours and starting up a business with the applicant after their 2011 marriage.

The evidence establishes that relocating adolescent dependents to a country with which they have no familiarity, cultural ties, or linguistic connection would impose a heavy burden on the qualifying relative. And, despite lacking evidence of her employment prospects, the record suggests that the applicant's wife would leave behind a strong support network and community ties, while experiencing significant obstacles to supporting her family and adjusting to life overseas. Under the totality of the circumstances, the applicant has provided sufficient evidence for us to find the hardship a qualifying relative would experience by relocating would amount to hardship that is beyond the common or typical result of removal or inadmissibility of a loved one. The applicant has therefore met his burden of establishing that a qualifying relative would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

Regarding separation, the applicant's wife contends that her husband's absence would cause her emotional and financial hardship. The psychologist who diagnosed her adjustment disorder with mild depression and anxiety notes self-reported symptoms including insomnia and sadness, as well as observed tearfulness, and attributes these problems to worry about the applicant's immigration problems. *See Psychological Evaluation,* May 23, 2012. The report concludes that his departure could cause possible worsening of her psychiatric condition. No treatment is recommended in the report (other than allowing the applicant to remain here). The AAO acknowledges the qualifying relative's concern over possible separation from her husband, whom she married in August 2011, and her worry about their future, but the report does not indicate that any emotional difficulty she is experiencing would be beyond that which is normally expected from the removal or inadmissibility of a close family member.

As the applicant's wife acknowledges being the sole financial provider for the family, the only financial hardship claimed is that she would have to dissolve a newly established transport business. While the record reflects the investment of $10,000 and efforts to register the company online, there is no indication the business is a going concern -- with assets, liabilities, customers, or employees – or that she would be unable to manage it without her husband's help. The record contains no documentation substantiating the applicant's background or training as a business owner in the transport industry or any other field, or as an employee, or showing he has any earnings history.

Coupled with the lack of evidence the applicant's departure would represent a financial hardship, the psychological report reflects that the applicant has not established his wife will suffer extreme hardship if he cannot remain in the United States. The record does not show that the cumulative effect of the emotional and financial hardships the qualifying relative will experience due to her husband's inadmissibility goes beyond the hardship normally imposed by the separation from a loved one. Her friends, relatives, and business relationships comprise a support network here. The AAO thus concludes that, based on the record evidence, were the applicant's wife to remain in the United States without the applicant due to his inadmissibility, she would not suffer hardship that rises to the level of extreme.

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 that the applicant has not established that his wife would suffer extreme hardship were the applicant unable to reside in the United States. The AAO recognizes that the applicant's wife will endure hardship as a result of

separation from the applicant. However, their situation is typical of individuals separated as a result of removal or inadmissibility and the AAO therefore finds that the applicant has failed to establish extreme hardship as required under section 212(i) of the Act.

In proceedings 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.