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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: JAN 04 2013 OFFICE: LOS ANGELES, CALIFORNIA File: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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 with the field office or service center that originally decided your case by filing a 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 came before the Administrative Appeals Office (AAO) on appeal and the appeal was dismissed. The matter is again before the AAO on motion to reopen. The motion will be granted, the matter will be reopened, and the prior decision of the AAO will be affirmed.

The applicant is a native and citizen of Armenia who was found to be inadmissible 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse and child.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Field Office Director,* dated April 23, 2008.

On appeal, the AAO concluded that the applicant failed to submit evidence sufficient to establish that extreme hardship would be imposed on a qualifying relative, and dismissed the appeal accordingly. *See Decision of the Administrative Appeals Office,* dated December 14, 2011.

On January 12, 2012 counsel for the applicant filed *Form I-290B, Notice of Appeal or Motion* to the AAO. On the Form I-290B, in Part 2, counsel indicated that he was filing a motion to reopen by marking box "D". *See Form I-290B*, received January 12, 2011.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Counsel contends that since the filing of the appeal: (1) the applicant and her spouse now have a five-year-old child and that the applicant is currently pregnant with their second child; (2) the applicant's spouse's parents will suffer medical and economic hardship which will result in extreme hardship to the applicant's qualifying relative; and (3) current country conditions reports for Armenia show that the applicant's spouse will be unable to earn a living there sufficient to support himself, the applicant, their children and his elderly parents whom counsel asserts are economically dependent on him. New documentary evidence has been submitted on motion. The AAO finds that the applicant has met the requirements of 8 C.F.R. § 103.5(a)(2) and the motion will be granted and the application reopened.

The record has been supplemented on motion with: Form I-290B and counsel's letter; a birth certificate for the applicant's first child, born October 13, 2007; a notice from The Maternity Center, dated December 6, 2011 indicating that the applicant is due to deliver her second child on July 16, 2012; a physician's letters summarizing the applicant's parent's medical conditions; a May 2008 psychologist's letter and January 2012 psychiatrist's letter; an April 2011 human rights report for Armenia; infertility treatment records from 2005 and 2006; a 2010 income tax return and Form W-2 wage and tax statements; and a letter from a parish priest. The record also

contains, but is not limited to: various immigration applications and petitions; a hardship letter and letters from the applicant, her parents-in-law, brother-in-law and a friend, all from May 2007; marriage and birth records and family photos; mortgage and billing statements from 2007; and the applicant's sworn statement concerning her unlawful entry into the United States. The entire record was reviewed in rendering a decision on motion.

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

> (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.

The record reflects that on January 16, 2002 the applicant entered the United States by presenting another individual's Russian passport and visa. Based on the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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

> (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 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. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is her only 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.

The record reflects that the applicant's spouse is a 40-year-old native of Armenia and citizen of the United States who has been married to the applicant since October 2002. Now that documentation has been submitted, the record shows that the applicant and her spouse have a five-year-old child, and that at the time the motion was filed the applicant was pregnant and due to deliver in July 2012. It is noted that despite the passage of nearly five years between the submission of the applicant's spouse's May 8, 2007 hardship letter and the submission of the current motion, a new or updated hardship letter has not been submitted for the record. Thus the only current assertions of separation-related hardship to the applicant's spouse are those relayed by following an interview with the applicant and her spouse on January 6, 2012.

does not personally diagnose the applicant's spouse but rather refers to "a 2008 psychological report" by which "offered diagnoses of Generalized Anxiety Disorder (GED), and Insomnia related to GAD." writes that queries regarding the current mental state of the applicant's spouse "revealed that these symptoms remain active." relays that the applicant's spouse has tried to rid himself of anxious thoughts of his wife's deportation and cannot fathom his life without her or his children. anticipates that separation would cause the applicant's spouse's anxiety symptoms to worsen. She adds that the applicant's children, one of whom had not yet been born, would suffer emotional and psychological hardship in the event of being separated from their father. The AAO notes that there is no requirement that the applicant's U.S. citizen daughter or any subsequent U.S. citizen children born to her relocate to Armenia in the event of her removal. The AAO recognizes that the applicant's spouse will experience some emotional and psychological difficulties related to separation from the applicant. However, the evidence in the record is insufficient to demonstrate that these difficulties are distinguished from those ordinarily associated with the removal or inadmissibility of a loved one.

asserts, without corroboration, that the applicant's spouse's parents live with him. It is noted that while the AAO addressed this on appeal, no corroborating documentation has been submitted. It is further noted that on the 2010 Form W-2 tax and wage statements submitted for the record, the applicant's spouse's mother and father list a post office box as their address in their capacity as employers of the applicant's spouse. reports that the applicant's spouse's mother and father both have medical problems but that given the applicant's nursing background she is able to provide medical care for them such that the services of a home health nurse have not been required. It is noted that the record contains no documentary evidence showing that the applicant has a nursing background. While contends that the applicant has a degree in mid-wifery, completed a registered nursing degree program in December 2011, and is working toward licensure by spring 2012 no corroborating evidence has been submitted for the record. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *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)). The record does show that the applicant is a pharmacy technician who was employed by at least through tax year 2010.

Concerning the applicant's spouse's parents, two single-paragraph letters from both dated January 9, 2012, have been submitted. states that the applicant's spouse's father's current illnesses are hypertension, arthritis, angina pectoris, diabetes mellitus which needs constant monitoring, back pain with radiculopathy, arthritis, vertigo, anxiety and insomnia; and the applicant's spouse's mother's present illnesses are uncontrolled/malignant hypertension which needs constant monitoring, headaches, stroke x2, generalized weakness, vertigo, cervical arthritis, back pain with radiculitis, arthritis, anxiety, and trouble falling asleep at night. No more specific information or documentation has been provided identifying any past or current treatment or medications. In a letter dated May 8, 2007 the applicant's in-laws write that she cooks, cleans, takes care of them, is a great daughter-in-law and is a great benefit in their lives. A current or more recent letter from the applicant's parents has not been submitted. relays that in December 2011 the applicant recognized her mother-in-law was suffering symptoms that could be indicative of a potential stroke and took her to the emergency room. notes that the applicant takes her in-laws to their medical appointments which she would no longer be able to do if removed to Armenia. While the extent and/or nature of specialized care provided by the applicant to her in-laws is not fully documented, it is acknowledged that she assists in their day-to-day care and the AAO has considered this, in the aggregate, along with all assertions of separation-related hardship to the applicant's qualifying relative spouse.

The applicant's spouse does not assert that he is financially dependent upon the applicant such that he would be unable to support himself in her absence. He contends, however, through that he does not have the disposable income to fly back and forth to Armenia to visit the applicant in the event of her removal.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse. The difficulties described, however, do not take the present case beyond those hardships ordinarily associated with removal of a family member, and the evidence in the record is insufficient to demonstrate that the challenges to the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

The applicant's spouse does not address the possibility of relocating to Armenia in his May 8, 2007 letter and no more recent documents by him have been submitted since. Counsel asserts that the applicant's spouse speaks Armenian but is not literate at reading and writing, has not returned to Armenia since leaving at 15 years of age, and thus cultural readjustment would cause him extreme hardship and difficulties beyond the norm. relays that the applicant's spouse is extremely close to his family and would be devastated by separation from them. She maintains that he would have great difficulty adjusting to life in Armenia given that he has lived in the United States for more than half his life and his entire family resides in the Los Angeles area. adds that the applicant's spouse would be isolated from his parents and feel extreme guilt for the perception that he abandoned them. writes in a May 22, 2008 letter that the applicant and her spouse "do not have 'connections'" any longer in Armenia.

relays that the applicant's spouse owns, operates and is the only employee of a printing company called that comparable work does not exist in Armenia and he

could not support his family. speculates that the applicant, like her spouse, would be unable to secure meaningful work in Armenia and cites uncorroborated assertion that professionals are expected to pay and bribe their way for positions. The U.S. State Department's 2010 Human Rights Report: Armenia, dated April 8, 2011 has been submitted on motion. This document only cursorily addresses employment and the economy in Armenia where, as noted by counsel, the final page indicates that the monthly minimum wage is about $80. The evidence in the record is insufficient to demonstrate that the applicant and her spouse would earn only the minimum wage in Armenia or that the printing business does not exist in the country. The report confirms that government corruption "remained a problem" in Armenia, but nowhere does it corroborate the assertion that professionals are expected to bribe their way for positions such that the applicant and her spouse would be unable to secure employment sufficient to support their family. Counsel asserts that the applicant's spouse has only one elderly uncle and aunt in Armenia who are retired and do not have any economic means to help support him and his family. No corroborating evidence has been submitted nor has it been established that the applicant and her spouse could not support themselves in Armenia.

states that the applicant's spouse provides supplemental support to his parents and purchases food and other expenses for them. Despite the AAO having addressed on appeal that the record contains no documentary evidence showing that the applicant's spouse supports his parents financially and no income evidence or financial records pertaining to them, no such evidence has been submitted on motion. Rather, two 2010 Form W-2 wage and tax statements have been submitted listing the applicant's spouse's father, , and his mother, as employers of their son who paid him, as their employee, a salary of about $13,000. Thus the only financial evidence in the record concerning the applicant's spouse's parents demonstrates that they support him financially, by employing him. writes that the applicant's spouse has two elder brothers and one sister, all U.S. citizens living in the Los Angeles area, but contends that Armenian tradition dictates the youngest son must assume financial and custodial responsibility of his parents. No corroborating documentary evidence has been submitted. And while letters from all three siblings have been submitted for the record none address, explain, or assert that they would be unwilling or unable to care for or provide financial support for their parents in the event that the applicant's spouse decides to relocate to Armenia. The evidence in the record is insufficient to show that the applicant's spouse's parents are financially dependent upon him such that relocation to Armenia would result in extreme hardship to him as the qualifying relative.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including his adjustment to a country in which he has not resided for many years; his lengthy residence in the United States and his home and business ownership herein; his significant family ties to the United States – particularly to his mother, father and three siblings – all of whom reside in the Los Angeles area; his community and church ties; lack of family ties or connections in Armenia; the emotional and psychological impact of separation from his family in the United States; that his young U.S. citizen child(ren) would be raised and educated in Armenia instead of in the United States; and stated economic and employment concerns as well as concerns about government corruption in Armenia. Considered in the aggregate, the AAO

finds that the evidence is insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to Armenia to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges her spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. 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 these proceedings, the burden of establishing eligibility for a waiver under section 212(i) of the Act rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met her burden and the application will remain denied.

ORDER: The motion is granted, the prior decision of the AAO is affirmed, and the Form I-601 application remains denied.