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

(b)(6)

U.S. Citizenship and Immigration Services

Date: JAN 14 2013 Office: NEWARK 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,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey. 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 Brazil 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 admission to the United States through fraud or misrepresentation. The applicant entered the United States on June 5, 2003 using a fraudulent visa. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside in the United States with his U.S. Citizen spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Field Office Director,* dated January 17, 2012.

The record contains the following documentation: a brief filed by the applicant's attorney in support of the Form I-290B, Notice of Appeal or Motion; statements by the applicant and the applicant's spouse; financial documentation; a psychiatric evaluation for the applicant, the applicant's spouse, and the applicant's son and step-children; and documentation on country conditions in Brazil. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

On appeal, counsel states that the applicant applied for his U.S. visa through a travel agency in Brazil, and was not aware that the visa he received was fraudulent. The applicant submitted an affidavit in which he states that he submitted his application through a travel agency in Sao Paulo, Brazil, and that the travel agency charged him 3,600 Brazilian Real (approximately US $1,200 in 2003), which included round trip for the applicant and his brother to travel to Sao Paulo to apply for the visa. Counsel indicates that the applicant had no idea of the falsity of the visa, and that the applicant entered the United States under a mistaken belief that his documents were valid.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In the present case, the applicant has failed to meet his burden of demonstrating that he did not know the visa he presented was fraudulent.

The applicant does not present any evidence to show he believed he was employing a legitimate travel agency to facilitate a genuine B-2 nonimmigrant visa application. Further, the record contains conflicting statements from the applicant concerning his application for the visa. In a notarized affidavit dated July 8, 2011, the applicant stated that he and his brother were transported to a travel agency in Sao Paolo named [redacted] and at that agency a woman took his documents and gave him a form to fill out, and after two hours she returned with the visa in his passport. In a sworn statement given on June 3, 2011 to a USCIS officer, the applicant had stated that he was scheduled for an interview in Sao Paolo and he appeared at a building he believed to be the U.S. Consulate, where a woman in a uniform took his documentation and provided him with the visa two hours later. He stated that he and his brother filled out the visa application form, he did not pay any fee except for the visa application fee, and he did not know the amount paid because his brother took care of it. In a notarized affidavit dated October 27, 2011, the applicant stated that he filled out only part of the visa application, and the travel agency where he lived in Governador Valadares filled out the rest of the application and charged him 3,600 reais, which included transportation to Sao Paolo to apply for the visa. Based on the evidence on the record, including the applicant's inconsistent statements concerning the manner in which he obtained the visa, the AAO finds that the applicant has not established that he was unaware that the visa he obtained was not a legitimate visa.

As such, despite counsel's assertion to the contrary, it has not been established by a preponderance of the evidence that the applicant did not obtain admission by fraud and/or misrepresentation. The AAO thus concurs with the Field Office Director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

> 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be "qualifying relatives." However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a

qualifying relative experiences extreme hardship. 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 v. I.N.S.*, 138 F.3d 1292 1292, 1293 (9th Cir. 1993), (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 that if the waiver application is denied, the applicant would not have the financial means to support his wife and step-children and son from Brazil due to the economic difficulties in that country, and submitted documentation on economic conditions in Brazil. Under section 212(i) of the act, hardship to the applicant can only be considered insofar as it would cause hardship to a qualifying relative, which in this case is the applicant's spouse. Financial documentation in the file indicates that in 2010, the applicant's spouse was employed as a cashier, earning $16,560 per year. There is no further documentation in the record regarding the financial status of the applicant's spouse in the United States. The evidence in the record is insufficient to conclude that the qualifying spouse is unable to meet her financial obligations in the applicant's absence. 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 further asserts that the applicant's spouse will suffer emotional hardship if the applicant's wavier is not approved. In support of this contention, the applicant submitted a psychological evaluation for the applicant, the applicant's spouse, and the applicant's son and two step-children. The evaluation concludes that the applicant's spouse has a diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood. However, the record contains no further detail about the psychological condition of the applicant's spouse, and any treatment that may be required. The evidence on the record is insufficient to conclude that the emotional problems that the applicant's spouse is experiencing are resulting in hardship beyond the common results of removal or inadmissibility.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's spouse would face as a result of her separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

In regard to the applicant's spouse relocating to Brazil to reside with the applicant, the AAO notes that the applicant's spouse was born in the United States, has no ties to Brazil and is unfamiliar with

the culture there, and there is no indicate that she can speak Portuguese. In addition, the applicant's spouse has two children from a previous marriage, who were born in the United States. Counsel cites the case *Rios-Pineda v. INS*, 720 F. 2nd 529 (8th Cir. 1983), noting that the court held in that case that children born in the United States and residing in the United States since birth would experience educational and social hardship if forced to relocate. In addition, according to the statement by the applicant's spouse, the father of her two children has visitation rights, and thus she could not relocate to Brazil and take her two children with her.

The record thus establishes that if the waiver application were denied, the hardships that the applicant's spouse would face were she to relocate to Brazil, when considered in the aggregate, rise 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 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.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval rests with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden. Accordingly, the appeal will be dismissed

ORDER: The appeal is dismissed. The waiver application is denied.