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)

[redacted]

Date: JUN 2 6 2013 Office: MILWAUKEE [redacted]

IN RE: Applicant: [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, Milwaukee, Wisconsin. 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 India 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 attempting to procure admission to the United States through fraud or misrepresentation. The record reflects that the applicant is married to a U.S. citizen and is the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen husband and children.

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 Grounds of Inadmissibility (Form I-601) accordingly.[1] *Decision of the Field Office Director*, dated May 14, 2012.

On appeal, counsel for the applicant contends that U.S. Citizenship and Immigration Services (USCIS) erred by "ignoring substantial evidence of extreme hardship" that the applicant's spouse would experience if the applicant's waiver application is not approved. The Form I-290B, Notice of Appeal or Motion, indicates that counsel would submit a brief or additional evidence to the AAO within 30 days. However, no brief or additional evidence was received by the AAO; thus the record is considered complete as of the date of this decision.

The record contains the following documentation: a statement from the applicant's attorney on the Form I-290B, Notice of Appeal or Motion; a June 2005 statement by the applicant's husband; a May 2011 psychological evaluation for the applicant's husband and children; and financial documentation. 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.

The record reflects that the applicant arrived at JFK International Airport in New York on December 13, 1994, and she presented an Indian passport and U.S. visa belonging to another person to U.S. immigration inspectors. During questioning by inspectors on December 14, 1994, the applicant gave another false name in a sworn statement. The applicant was mailed a notice and scheduled for an

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[1] The record indicates that the applicant previously filed a Form I-601 on January 28, 2003, with an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the applicant being a dependent of her husband's approved Petition for Alien Worker (Form I-140). The District Director, Milwaukee, Wisconsin, denied this Form I-601 on October 12, 2005. A subsequent appeal of this denial was dismissed by the AAO on November 27, 2007.

immigration-court hearing but failed to appear, and the immigration judge ordered the applicant removed *in absentia* on February 3, 1995. The applicant is inadmissible because she willfully misrepresented a material fact through the use of false identity documents and during questioning in an attempt to procure entry into the United States.

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

> The Attorney General [now 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 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.

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 husband 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 the 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*, 138 F.3d 1292, 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 applicant's spouse claims that he and his children will experience psychological hardship if the applicant's waiver application is not approved. In support of this claim, the record includes a psychological report dated May 27, 2011, which indicates that the applicant's spouse and the applicant's daughter scored in the clinically depressed range of the Beck Depression Inventory-II test. The report, however, lacks the type of detailed psychological analysis that typically supports a mental-health diagnosis and is not the product of an ongoing treatment relationship. The record contains no further detail about the psychological condition of the applicant's spouse and any treatment that may be required. The evidence in the record is insufficient to conclude that the emotional problems that the applicant's spouse is experiencing related to the applicant's inadmissibility are causing him hardship beyond the common results of removal or inadmissibility.

The psychological report also refers to research addressing parental abandonment, familial disruption and parent-child separation, serial migration and parent-child separation, and children growing up without a father. The research relates to the emotional hardship that the applicant's children may face if her waiver application is not approved. As stated above, under 212(i) of the Act, children are not deemed to be qualifying relatives, and a child's hardship will only be considered to be a factor if it affects whether a qualifying relative experiences extreme hardship. In this particular case, though the

psychologist asserts that the applicant's spouse would experience a deeper depression if their children became depressed, the record does not support concluding that his emotional hardship would be extreme.

Financial documentation in the record, including a 2009 federal income tax return, indicates that the applicant and the applicant's spouse had a combined adjusted gross income of $31,821 that year. The record indicates that the applicant's spouse is self-employed as a business entrepreneur. The applicant's spouse makes no claim that he will suffer financial hardship if the applicant's waiver application is not approved, and the evidence in the record is insufficient to conclude that he would be unable to meet his financial obligations in the applicant's absence.

The applicant's spouse claims that he and their children are covered by the applicant's health insurance through her employment and that they will not have health insurance if the applicant is unable to continue to reside and work in the United States. However, there is no evidence in the record corroborating these claims or showing that the applicant's spouse is unable to obtain health insurance in the absence of the applicant.

The AAO recognizes that the applicant's spouse will endure emotional hardship as a result of separation from the applicant. However, his situation, if he 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 is facing, even when considered in the aggregate, do not rise to the level of extreme hardship as contemplated by statute and case law.

Concerning the hardship that the applicant's spouse would experience upon relocating to India to reside with the applicant, the AAO notes that the applicant's spouse was born in India and is familiar with the languages and customs of India. The applicant's spouse, however, states that he has no family members who live in India, and the psychological report indicates that his parents and two older siblings reside in Canada. The record also indicates that the applicant's parents reside in India, but their ability to assist her, her spouse, and their children is unclear.

The record lacks evidence regarding the extreme hardship the qualifying relative would endure if he were to relocate to India to be with the applicant. Though the psychological report refers to hardship that the applicant's children may experience upon relocation, the record does not support finding that their hardship would affect the applicant's spouse so severely that it could be considered extreme hardship. Based on the evidence in the record considered in the aggregate, the applicant has not established that her spouse would suffer hardship beyond the common results of removal if he were to relocate to India to reside with her.

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. Rather, the record demonstrates that he will face no greater hardship than the unfortunate but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship he would face rises to the level of extreme as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility, 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. The waiver application is denied.