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)

[redacted]

DATE: JUN 2 9 2013 Office: PANAMA CITY [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 Field Office Director, Panama City, Panama, denied the waiver application, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the underlying application denied.

The applicant is a native and citizen of Guyana 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 U.S. admission through fraud or misrepresentation. He is married to a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant does not contest this finding of inadmissibility, and is seeking a waiver of inadmissibility in order to come to the United States and live with his wife.

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,* January 27, 2011. On appeal, the AAO found that the applicant had failed to establish that a qualifying relative would suffer extreme hardship and dismissed the appeal. *Decision of the AAO,* October 3, 2012.

In support of the motion, the applicant's counsel submits the updated statement of the applicant's wife, the birth certificate of their child, medical records and medical bills, and copies of the data page from the qualifying relative's passport and other passport pages. The record includes the supporting documents submitted with the appeal of the waiver denial and the underlying waiver request. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides:

> (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.

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 reflects that the applicant used a fraudulent Canadian passport on August 17, 2004 to seek U.S. admission as a visitor in transit to Canada, several months after marrying the qualifying relative overseas, and was removed on October 13, 2004 to Guyana, where he has since resided. The record shows the field office director found the applicant inadmissible for using fraudulent travel documents and, on appeal, the AAO likewise found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. 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 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.

For the reasons discussed below, despite new evidence provided on motion that his wife gave birth on October 2, 2012, the applicant has not established that his failure to obtain a waiver will impose extreme hardship on a qualifying relative.

Regarding the claim of emotional and physical hardship, counsel for the applicant contends that becoming a single parent imposed such an enormous responsibility on the applicant's wife as to cause the applicant's absence to represent an extreme hardship. The AAO previously noted that a 2009 psychological report failed to recommend any treatment for the qualifying relative's self-reported stress and depression or address the anticipated course of her situation, and we note that she has provided no update to that evaluation, but has demonstrated having the means to travel overseas for visits with the applicant to lessen the pain of separation. The record contains a medical letter confirming that the applicant underwent a Cesarean-section delivery and medical records reflect that she was discharged three days later. Although she claims in a statement three weeks after giving birth to be unable to work due to her surgery, medical records fail to reflect the seriousness of her post-Cesarean condition or note her prognosis or plan for resuming regular activity. The medical letter states only that she was receiving care for "wound interruption" she had within a week of giving birth. Neither the nature of the injury nor the therapy is specified, there is no indication of any current limitation on her physical activity, and the letter gives no basis for concluding that seven months later she is still affected by this condition. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

The applicant's wife now claims that her husband's absence is causing her financial hardship. The evidence suggests the applicant has a job in Guyana, although his wife asserts it is not steady employment. We stated in our prior decision that "the record contains no evidence of either the applicant's or his wife's assets, expenses, or income," and note that this statement remains true, except that the record now contains information regarding the qualifying relative's medical expenses. These bills reflect that the medical expenses were largely paid by insurance, and there is no indication they represent a financial burden. Documentation shows that the qualifying relative lived in Guyana for the first third of 2012 before returning to the United States, indicating that she and her husband had the means to cover her travel and living expenses during a four-month absence from her job in the United States. She claims it will be difficult for her to take care of her child as a

single mother, but makes no showing she has investigated the cost of childcare or that her mother or any other family member would be unavailable to help out. There is thus insufficient evidence of either the qualifying relative's or the applicant's overall financial situation to establish that, without the applicant's physical presence in the United States, his wife will experience financial hardship.

The record fails to show that the cumulative effect of the emotional, physical, and financial hardships the applicant's wife is experiencing due to her husband's inadmissibility goes beyond the hardship normally imposed by the separation from a loved one. 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 extreme hardship.

Regarding relocation, counsel for the applicant offers no new evidence and the record thus still lacks evidence of any logistical, safety, or security concerns. Counsel previously asserted that returning to Guyana would endanger the qualifying relative's life. The AAO observed in dismissing the appeal that the record contains no evidence regarding safety issues and that the applicant's wife reports using every vacation from work as an opportunity to visit her husband, and we note that new documentation shows her continuing a pattern of travel to Guyana. In our prior decision we also rejected for lack of evidence her claim that moving back to Guyana would be difficult because she is helping her mother care for her elderly parents in the United States.[1] Although claiming that their child's future is in the United States, the qualifying relative offers no evidence that she or their child could not join the applicant overseas. Despite being advised in the dismissal decision that lack of documentation of the qualifying relative's background or the employment situation overseas prevented the AAO from assessing her employment prospects there, the applicant has provided no evidence to remedy this evidentiary shortcoming. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 applicant has provided insufficient evidence of the problems his wife would experience by returning to Guyana. He has, therefore, not shown a qualifying relative would suffer extreme hardship were she to relocate abroad to reside with him due to his inadmissibility.

The documentation on record, when considered in its totality, reflects that the applicant has not established his wife would suffer extreme hardship were the applicant 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 is typical of individuals separated as a result of removal and inadmissibility, and the AAO therefore finds that the applicant has failed to establish extreme hardship to his wife as required under section 212(i) of the Act.

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 wife will face extreme hardship if the applicant is unable to

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[1] "There are no details on record regarding her mother's living situation, no indication of the nature or extent of the help she requires, or any showing that the qualifying relative is the only person able to fulfill this support role." *Decision of the AAO,* October 3, 2012.

reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's wife's situation, the record does not establish that the hardship she faces 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 and, accordingly, the prior decision of the AAO will be affirmed.

ORDER: The motion is granted. The waiver application remains denied.