(b)(6)

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

[redacted]

DATE: MAY 21 2013 Office: NEW YORK, NY FILE: [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, New York, New York. The denial was appealed to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a native and citizen of the Dominican Republic who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having misrepresented material facts when applying for admission to the United States. He is married to a U.S. citizen, and has one U.S. citizen child and one Lawful Permanent Resident child. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on February 15, 2012.

On appeal, counsel for the applicant asserts the Field Office Director failed to give proper weight to the evidence and facts of the case when determining that the applicant's qualifying relative would not experience extreme hardship. *Attachment, Form I-290B*, received July 2, 2012.

The record contains, but is not limited to, the following documents: statements from the applicant, his spouse and friends and family members of the applicant; tax returns for the applicant and his spouse; country conditions materials on the Dominican Republic, including news periodicals on crime and corruption; Psychoemotional & Family Dynamics Assessment; a copy of the applicant's spouse's nursing license; copies of birth certificates and immigration documents for the applicant's children; and photographs of the applicant, his spouse and their children. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

> (i) In general. 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 chapter is inadmissible.

The record indicates that the applicant obtained a B-2 visitor's visa by falsely representing he was married in the Dominican Republic, indicating that he had a family tie to the country and would likely return. As such, the applicant entered the United States by materially misrepresenting his identity with a false passport and is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest inadmissibility on appeal.

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 his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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 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.

Counsel asserts on appeal that the Field Office Director failed to give proper weight to the hardship factors which would impact the applicant's spouse due to his inadmissibility. *Brief in Support of Appeal*, received August 30, 2012. A statement from the applicant's spouse asserts that she would not be able to find commensurate employment as a nurse in the Dominican Republic, and that she would experience a reduction in lifestyle upon relocation. *Statement of the Applicant's Spouse*, dated September 15, 2010. She further states that she has no family ties in the Dominican Republic and that all of her family members reside in the United States.

Counsel further explains that the applicant's spouse would suffer physical hardship upon relocation because of the incresing crime and poor country conditions in the Dominican Republic.

The record contains copies of country materials discussing the crime, corruption and poverty in the Dominican Repoublic. The materials submitted are sufficient to demonstrate that the Dominican Republic faces significant challenges. However, they are insufficient to demonstrate that the applicant's spouse would be unable to find employment as a nurse in the Dominican Republic, that she would be specifically impacted by crime or unemployment rates in the Dominican Republic or that the conditions in the Dominican Republic are so difficult that it represents an uncommon physical hardship to relocate there. While the AAO recognizes that the applicant's spouse might not be able to continue enjoying the lifestyle she has obtained in the United States, this does not represent an uncommon physical hardship.

Counsel asserts that the AAO should consider the hardship to the applicant's daughters, even though they are not qualifying relatives. While the AAO may give some consideration to the impacts on a qualifying relative due to hardship impacts on other family members, in this case, the record does not contain any evidence that the applicant's children would experience hardships which that elevate the applicant's spouse's challenges to an extreme level.

The AAO also recognizes that the applicant's spouse has no family ties in the Dominican Republic and that her family resides in the United States. However, having to sever family and community ties upon relocation is a common impact.

When the hardship factors asserted upon relocation are considered in the aggregate, the AAO does not find them to rise above the common impacts of relocation to a degree constituting extreme hardship.

With regard to hardship due to separation, counsel asserts that the applicant's spouse would have to live as a single parent in the United States without the physical, financial and emotional assistance of the applicant. *Brief in Support of Appeal*, received August 30, 2012. Counsel refers to a psychological assessment of the applicant's spouse in the record and asserts the Field Office Director should not have given it diminished weight simply because the applicant had seen the doctor only once.

The Psychoemotional & Family Dynamics Assessment, dated February 17, 2012, and written by narrates the background and self-reported symptomology of the applicant's spouse and concludes that she suffers from Adjustment Disorder with Mixed Anxiety and Depressed Mood. Although this report fails to sufficiently distinguish any emotional impact on the applicant's spouse from that which is commonly experienced by the relatives of inadmissible aliens, the AAO will nonetheless accord some weight to the report and consider the emotional impact on the applicant's sposue when aggregating the hardship factors due to separation.

The record contains evidence indicating that the applicant's spouse is currently employed as a nurse and earns over $80,000 annually. The record does not contain evidence indicating what her monthly financial obligations are, or evidence that she would be unable to meet her financial obligations in the event of the applicant's departure.

Counsel has asserted that the AAO should give greater weight to the family bonds which exist between the applicant's two daughters and the psychological impact that would arise due to separation from the applicant. While the AAO recognizes that children may experience emotional hardship due to separtion from a parent, the record must demonstrate that such a hardship rises above that which would be commonly experienced by the relatives of inadmissible aliens. In this case, the record fails to demonstrate that any impact on the applicant's children would result in extreme hardship for the applicant's spouse.

Although the record indicates the applicant's spouse may experience emotional hardship due to separation from the applicant, this factor alone is not sufficient to demonstrate that the hardship impactso on the applicant's spouse, even when considered in the aggregate, rise to the level of extreme hardship.

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 spouse faces extreme hardship if the applicant is refused admission. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* 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.