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)

Date: MAY 24 2013 Office: SAN FERNANDO

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Fernando, California. 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 the Philippines who was found to be inadmissible to the United States 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 procuring an immigration benefit in the United States through fraud or misrepresentation. The record shows that in 2002, the applicant procured a false employment authorization card. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act 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 Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director,* dated July 11, 2012.

On appeal, counsel contests the Field Office Director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and further contends that the Field Office Director erred by failing to properly consider the evidence of hardship that the applicant's spouse would suffer if she is separated from the applicant and the waiver application is not approved.

The record contains the following documentation: a brief submitted by counsel in support of the Form I-290B, Notice of Appeal or Motion; a statement from the applicant's spouse; medical documentation for the applicant's spouse; a psychological evaluation of the applicant's spouse; financial documentation; photographs; and letters of reference. The entire record was reviewed and considered in rendering a decision on the appeal.

The attorney asserts in his brief that U.S. Citizenship and Immigration Services (USCIS) violated the applicant's due process rights by denying live testimony from the applicant's spouse regarding her hardship. He cites no authority requiring oral testimony from an applicant's qualifying family member during an adjudication of a waiver application. Moreover, constitutional issues are not within the appellate jurisdiction of the AAO; therefore this assertion will not be addressed in the present decision.

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 contends that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, as he has not committed fraud in gaining admission to the United States or in seeking any other immigration benefit.

The record indicates that on July 11, 2002, the applicant was issued an employment authorization document (EAD) as a non-immigrant student. The record does not indicate that the applicant was admitted into the United States as a non-immigrant student or that he changed his non-immigrant status from visitor to student after his admission in 2001. The record further indicates that the applicant's EAD was issued as the result of a fraudulent application and that the applicant's employment authorization was revoked on October 2, 2003.

The applicant stated in a declaration dated February 22, 2010 that in 2002, while he was working as a handyman, a fellow craftsman introduced him to a man named who could help the applicant obtain a work permit card for $3,500. The applicant stated in his declaration that he met with paid him $3,500, and that he subsequently received an EAD in the mail.

Counsel asserts that the Field Office Director's decision reflects no basis for finding the applicant inadmissible for committing fraud and that the applicant was not questioned about his alleged fraud or misrepresentation; he was asked to submit a statement about how he obtained an EAD. However, on the applicant's Form I-601, dated November 17, 2010, the applicant checked the appropriate box on the form to acknowledge that he sought to procure an immigration benefit by fraud or misrepresentation. Furthermore, on the Form I-601 the applicant clearly stated, in his own words, why he is inadmissible:

> I paid a man named for a work permit in 2002, which he obtained for me. I do not think there was any legal basis for me getting the work permit. I previously submitted a declaration dated 2-22-10 detailing these facts.

Thus, the applicant acknowledged that he believed at the time that there was no legal basis for him to procure an EAD in 2002, and he nonetheless paid an individual to procure one for him.

Section 291 of the Act, 8 U.S.C. § 1361, states that whenever any person makes an application for admission, the burden of proof shall be upon such person to establish that he is not inadmissible under any provision of this Act. The burden never shifts to the government to prove admissibility during the adjudication of a benefit application, including an application for a waiver. *See also Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978). The applicant has not met his burden. Given the applicant's signed statement describing the method by which he procured an EAD, his awareness that he was not entitled to an EAD, and the lack of evidence showing that he was in lawful non-immigrant student status at the time the EAD was issued, the AAO finds the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

> 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 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. 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 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. INS*, 138 F.3d 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 contends that the applicant's spouse would suffer from psychological hardship if the applicant's waiver application is not approved and she is separated from the applicant. In support of this contention, the record contains a psychological evaluation, dated October 5, 2009. The evaluation reflects a diagnosis of chronic post-traumatic stress disorder (PTSD), and early onset of dysthymic disorder for the applicant's spouse. The evaluation states that the applicant's spouse was sexually molested in the Philippines when she was eight years old, an emotionally and psychologically traumatic event that has led to symptoms typical of individuals who suffer from PTSD.

While the psychological evaluation provides information regarding the causes for the applicant's spouse's PTSD and early onset of depression, the evaluation lacks details concerning the psychologist's treatment recommendations and any information regarding her response to counseling or medical treatments that she may have received. Although the AAO is sympathetic to the family's circumstances and recognizes that the input of any health professional is respected and valuable, the record does not show that the applicant's spouse's condition is so serious that it is interfering with her ability to carry out her daily activities or otherwise amounts to hardship beyond the common results of inadmissibility of a loved one. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (holding that

the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

Counsel also contends that the applicant's spouse will suffer medical hardship if the applicant's waiver application is not approved. The psychological evaluation includes a list of medical conditions that the applicant's spouse provided, specifically cold sores, juvenile diabetes, low blood pressure, asthma, a neck injury from 2007, ovarian cysts, vertigo, urinary tract infection, poor vision, kidney problems, and throat problems. However, no medical documentation in the record corroborates claims that the applicant's spouse currently suffers from any of these conditions, nor does the record include a prognosis to treat these conditions. 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 record includes the results from an August 2012 visit to a medical clinic by the applicant's spouse, indicating that she suffers from muscle spasm, tension-type headache, atypical chest pain, and depression. The clinical summary includes a treatment plan listing a prescription for Prozac. However, the information in this medical report does not include details or analysis showing that the medical hardship to the applicant's spouse rises to the level of extreme as contemplated by statute and case law.

The record indicates that the applicant's spouse was employed with Inc., since March 2008 in the client service department, earning $14.00 per hour. According to her psychological evaluation of October 5, 2009, the applicant's spouse worked at a bake shop, at a blood-donor center, a diagnostic laboratory, and at performing billing and coding. Federal income tax returns from 2010 and 2011 list the applicant's spouse's employment as client service, with an annual income of $28,751 in 2010. The record shows that the applicant's spouse has been able to find successful employment, and there is no evidence in the record to support finding that the qualifying spouse would be unable to meet her financial obligations in the applicant's absence.

The AAO notes that the current employment status of the applicant's spouse is not clear. Evidence in the record indicates that in 2011, the applicant's spouse invested in a tattoo shop for the applicant. Further evidence indicates that she enrolled in a vocational nursing program at in April 2012. However, the record does not indicate that the applicant's spouse terminated her employment at or that she attends school full time. The applicant's spouse states that if the applicant returns to the Philippines, she would be forced to close the tattoo business. While the loss of the business likely would cause some hardship to the applicant's spouse, there is insufficient evidence in the record to conclude that the applicant's spouse would be unable to meet her financial obligations based upon her ability to find successful employment 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. Considering the evidence of her hardship in the aggregate, the AAO finds that her hardship does not rise to the level of extreme hardship.

Regarding hardship that she may experience if she were to relocate to the Philippines, the record indicates that the applicant's spouse was born in the Philippines and is familiar with the language and customs of that country. According to her psychological evaluation, she was sexually molested in the Philippines when she was eight years old and is suffering from PTSD as a result. However, the record lacks information about whether the applicant's spouse's PTSD would worsen if she returned to the Philippines.

Moreover, the record indicates that the applicant's spouse's mother still resides in the Philippines, though the applicant's spouse claims that they do not have a close relationship. The AAO notes that there is no indication in the record that the applicant's spouse has not returned to the Philippines since she arrived in the United States in 2002. In addition, the record indicates that the applicant also has relatives residing in the Philippines; however the record does not show whether the applicant's family members could assist the applicant and his spouse, were they to reside in the Philippines.

Based on the evidence on the record, the applicant has not established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to the Philippines to reside with him. The AAO finds, considering the evidence of hardship in its cumulative effect, that it fails to establish that the applicant's spouse would experience extreme hardship were she to move to the Philippines with the applicant.

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

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.