(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

DATE: MAY 28 2013 Office: PHILADELPHIA, PA 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,

Ron Rosenberg,
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Mali who used a visa obtained with false information to enter the United States. The applicant 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). He is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

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 May 10, 2012.

On appeal, counsel for the applicant points out that the Field Office Director referenced the wrong provision of law in his decision, and further asserts that the record demonstrates a qualifying relative will experience extreme hardship due to the applicant's inadmissibility. *Form I-290B*, received July 3, 2012.

The record contains, but is not limited, the following relevant documents: a statement from the applicant and his spouse; medical exams and other medical documentation relating to the applicant's spouse's parents; a financial breakdown of financial obligations of the applicant's spouse; a statement from pertaining to health conditions of the applicant's spouse; lab reports and other technical medical documents related to both the applicant's spouse and the applicant's spouse's parents; copies of financial records such as tax returns, household utility bills, pay stubs and bank statements for the applicant's spouse; and copies of pharmacy receipts for the applicant's spouse's parents. 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 paid someone $5,000 to obtain a visa to enter the United States. The applicant misrepresented that he was married in Mali, a material fact as it represented ties to his native country. Thus, the applicant entered the United States by willfully misrepresenting material facts relevant to his eligibility for a B visa or admission in B status. Therefore the applicant 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 may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 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 a VAWA self-petitioner, 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 an applicant or any 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.

The applicant's spouse asserts in her statement that she will experience emotional, financial and physical hardship due to the applicant's inadmissibility. *Statement of the Applicant's Spouse*, dated March 20, 2012. She states that her parents are elderly, have numerous medical conditions and rely on her physically and financially to support them. She states that they have no other family members which would be able to assist them if she were to relocate to Mali with the applicant. She also notes that she was born in the United States and has no family ties to Mali.

The record contains substantial documentation regarding the medical conditions of the applicant's spouse. While there is little evidence to support the assertion that the applicant's parents would be unable to provide for themselves physically, or even that the applicant or his spouse have actually provided any financial support to the applicant's spouse's parents, the record does establish that they are elderly, have medical issues and reside near the applicant's spouse. As such, the AAO finds that the applicant's spouse has strong family ties to the United States, and that having to relocate to Mali would sever these ties resulting in an uncommon emotional hardship factor.

The record also contains evidence that the applicant's spouse has Diabetes Mellitus and other medical conditions. asserts in her statement that the applicant's spouse suffers from Diabetes, Hypertension, morbid obesity and an elevated white blood cell count. It further states that she should remain under close observation.

Based on this evidence the AAO can conclude that the applicant's spouse would experience an uncommon physical hardship upon relocation due to the fact that she would have to sever ties with the medical doctors familiar with her condition and history, disrupting the continuity of her medical care.

While the applicant's spouse does not clearly articulate the impacts that she would experience due to relocation, the AAO finds that the evidence in the record sufficiently highlights what impacts would likely arise due to relocation. When this evidence and the impacts are considered in the aggregate, along with the more common impacts of relocation, the AAO finds that they rise above the common hardships to a degree of extreme hardship.

With regard to hardship due to separation, however, the record is less clear. The applicant's spouse states in her letter that she would be unable to care for her parents in the way she currently does without the assistance of the applicant. *Statement of the Applicant's Spouse*, dated March 20, 2012. She further states that she would not be able to support them financially if the applicant was removed, and that her own medical conditions would worsen due to the fact that the applicant helps cook her daily meals and helps her manage her health condition.

The record includes the medical documents discussed above, including a hand-written statement from the applicant's spouse's doctor, lab reports and test results. The two documents from indicate that she has been diagnosed with Diabetes, Hypertension, and an elevated white blood cell count. However, the doctor's brief statements are not sufficient to fully explain the physical impacts on the applicant's spouse. There is no indication of any prognosis for her conditions, what steps are being taken to treat her medical issues or that she needs any physical assistance to meet her daily needs. The record indicates that the applicant's spouse is fully employed, indicating that her conditions are not such that she needs physical support.

The AAO will give some consideration to the fact that the applicant's spouse has medical conditions which require monitoring. While these facts might result in an uncommon hardship factor due to relocation, the evidence in the record is not sufficient to demonstrate that her medical conditions alone would result in extreme hardship due to separation. Nonetheless, her medical conditions will be considered when aggregating the impacts on her due to separation.

The applicant's spouse states that she and the applicant want to have children together, and that if she is separated from him they will be unable to do so. While the AAO respects the applicant's spouse's desire to have children, the applicant has not shown that interference with this desire will result in extreme hardship.

The record contains a short description of financial obligations listing utilities payments and other bills. Several of the financial costs listed on the form are not supported by evidence corroborating the applicant's assertions, and some of the costs listed are not routine or set obligations. As an example, the applicant's spouse asserts that the applicant helps support her parents financially, but there is nothing in the record which indicates that he has provided financial support for them. The record indicates that the applicant was earning $9,000 annually, and it is not clear how the applicant's income was being used to support his spouse or her family. While the AAO can ascertain the applicant's spouse may experience a decrease in her available income for the household, or that she might experience some increased financial burden due to his departure, there is nothing which indicates that she would be unable to meet her financial obligations without him or that she would experience an uncommon financial impact due to his departure. In addition, it appears that the applicant's spouse may be residing with her parents, as she lists the same address as they do. Further, her tax returns do not list any financial dependents, such as her parents.

Based on this evidence, the AAO finds that the record does not indicate the applicant's spouse will experience any uncommon financial impact due to his departure, and in fact indicates that the applicant's spouse may be residing with her parents, mitigating the financial impacts of the applicant's departure.

Even when these factors are considered in the aggregate, they fail to rise above the common hardships to a degree constituting extreme hardship. 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.