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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: OCT 0 2 2013 Office: TAMPA 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Tampa, Florida, denied the waiver application. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion is granted and the prior AAO decision is affirmed.

The applicant is a native and citizen of Canada 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 admission to the United States through fraud or misrepresentation.[1] The record reflects that in 2010 the applicant entered the United States claiming to be visiting temporarily on business when in fact he had resided and worked in the United States for more than 35 years. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with his U.S. citizen spouse.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated October 6, 2011.

On appeal the AAO determined that the applicant had established extreme hardship to his qualifying relative spouse if she were to relocate abroad to reside with the applicant, but failed to establish that his spouse would suffer extreme hardship as a result of separation from the applicant if she were to remain in the United States while the applicant resided abroad due to his inadmissibility. *See Decision of the AAO* dated February 28, 2013.

On motion counsel for the applicant contends in the Notice of Appeal (Form I-290B) that the qualifying spouse would suffer extreme hardship if the applicant returns to his native Canada, leaving her behind in the United States. With the motion counsel submits medical records for the applicant and a psychological evaluation of the applicant and spouse. The record contains the applicant's will; property deeds for the applicant and for his spouse; a 2009 marriage certificate for the applicant and his spouse; affidavits from the applicant and spouse; a psychiatric evaluation of the spouse; tax documentation; documents related to the guardianship of the spouse's father; and a letter for support from a colleague of the applicant. The entire record was reviewed and considered in rendering a decision on motion.

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.

---

[1] The Field Office Director had determined the applicant to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having accrued unlawful presence in the United States of more than one year, but on appeal the AAO found that determination to be incorrect. The AAO found, however, that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

> 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. 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. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

As noted, the AAO determined on appeal that the applicant had established that his qualifying spouse would experience extreme hardship if she were to relocate abroad to reside with the applicant. As such, this criterion will not be addressed on motion. In the same decision, however, the AAO found that the applicant had failed to establish that his spouse would experience extreme hardship if she remained in the United States while the applicant resided abroad due to his inadmissibility. The AAO determined that the applicant had not established how his spouse's situation differs from others facing separation, that the applicant's spouse would be unable to travel to Canada on a regular basis to visit the applicant, or that the applicant would be unable to provide financial assistance from Canada. The AAO found that the record contained a psychological evaluation from a single visit, but no other documentation regarding the spouse's emotional hardship or evidence how such emotional hardships are outside the ordinary consequences of removal. The AAO further determined that the applicant's spouse has her own home and business, and that although she stated that she depends on the applicant financially and that he could not manage his businesses from Canada, no documentary evidence had been submitted to the record to establish that the applicant would be unable to assist the spouse financially from Canada.

On motion counsel contends that the applicant and spouse are now senior citizens married later in life and relying on each other's daily company. Counsel asserts that the spouse's real estate business is essentially moribund so she would be destitute without the applicant's financial support. Counsel asserts that given the applicant's age he will be unlikely to find employment in Canada, particularly

since he derives his income from his own business operations in the United States which require hands on management.

Medical documentation submitted on motion shows that the applicant had heart surgery in February 2013 and is under the care of a physician.

A psychological evaluation states that the applicant's spouse reports a lack of appetite, difficulty sleeping, tense muscles, and recurrent worries. The evaluation finds the applicant's spouse experiencing an adjustment disorder from the stress of her inability to control the outcome of applicant's situation and the fear of separating from him. It states that the applicant's spouse reports her daughter also relies on the applicant for emotional, physical, and financial support. The evaluation found that the applicant and his spouse are emotionally dependent on each other and that the spouse and her daughter depend on the applicant financially. The evaluation further states that it would be difficult for the applicant's spouse to find viable employment opportunities at this time of life to provide for herself and her daughter if the applicant were removed from the United States.

The AAO finds that the record fails to establish that the qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. On motion, the questions raised by the AAO with respect to applicant's inability to provide financially from Canada have not been addressed. Counsel asserts that without the applicant the spouse would be destitute because her business is moribund and the applicant provides financially for her, which he would be unable to do if removed from the United States. The only documentation provided on motion are medical records for the applicant and a psychological evaluation of the applicant and his spouse, but nothing to support the contention that the applicant would be unable to financially support the applicant or continue to operate his businesses from Canada, or that his businesses would cease to provide an income.

Counsel asserts that the applicant's spouse depends emotionally on the applicant, and submits a psychological evaluation. The report provided does not establish that the hardships the applicant's spouse would experience are beyond the hardships normally associated when a spouse is found to be inadmissible. The AAO recognizes that the applicant's spouse will endure some hardship as a result of long-term separation from the applicant. However, her situation if she 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. Nor has it been established that the applicant's spouse would be unable to travel to Canada on a regular basis to visit the applicant.

The submitted medical documentation does not establish that the applicant's health condition is so severe as to create a hardship for the spouse if the applicant is unable to reside in the United States.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation and the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme

hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion is granted and the prior AAO decision is affirmed.