**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)

DATE: OCT 0 3 2013 Office: DETROIT 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 (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, Detroit, Michigan, 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 prior AAO decision affirmed.

The applicant is a native and citizen of Macedonia (formerly Yugoslavia) 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 procuring a visa and admission to the United States by fraud or misrepresentation. The applicant seeks a waiver of inadmissibility as the beneficiary of his son's approved immigrant petition in order to remain in the United States.

The field office director found the applicant 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,* October 12, 2012. The AAO similarly concluded that the record evidence did not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility and dismissed the appeal. *Decision of the AAO*, May 15, 2013.

On motion, counsel contends that the applicant is already a permanent resident whose status was never rescinded and that the AAO's dismissal of the appeal constitutes an erroneous application of the facts to the extreme hardship standard. Counsel provides a brief and evidence not previously submitted, including updated hardship and support statements; a follow-up medical evaluation; financial documents, including job letters and business incorporation filings; and photographs. This evidence supplements documentation provided on appeal, including new hardship statements of the applicant and his wife; country condition information; an employment letter, tax returns, and W-2s; a neurological evaluation; and handwritten notations on two prescription pad pages. The record also includes, but is not limited to: support statements; birth and marriage certificates; prior statements by the applicant and his wife; and copies of a passport, immigrant visa (IV), and IV application. The entire record was reviewed and all relevant information considered in reaching this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part,

> 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 indicates that, in order to obtain an immigrant visa as the unmarried son of a lawful permanent resident (LPR), the applicant claimed on his visa application dated November 20, 1980 to be single, despite having married on September 14, 1979. He continued to misrepresent his marital status to a Consular Officer on February 24, 1981 in order to obtain a visa,[1] and was admitted to the United States on March 20, 1981 using the fraudulently obtained immigrant visa. After the fraud was detected when he petitioned for his wife on June 9, 1982, he departed the country on or about August 24, 1982. He was placed in deportation proceedings for having entered the United States without a valid immigrant visa because he was married when he entered as the unmarried son of an LPR, but he failed to attend his scheduled hearing in 1983. He returned to the United States in 1996 as a B2 nonimmigrant visitor and has not departed since that time.

The record shows that the applicant was not ordered deported because he had already departed the United States. He remained outside the country for 14 years, thus abandoning his LPR status. *See U.S. v. Yakou,* 428 F.3d 241 (D.C. Cir. 2005)("[I]n adjudicating an individual's LPR status, the BIA has expressed its understanding that the status changes at the point a LPR engages in an abandoning act, like departing the United States for more than a 'temporary visit abroad,' [citation omitted], not at the point when the BIA makes a determination of the person's status in a removal proceeding or when the individual files Form I-407 [Abandonment of Lawful Permanent Resident Status]."); *see also Matter of Kane,* 15 I&N Dec. 258, 265 (BIA 1975) ("If any of her absences have been other than temporary in nature, she has lost the status of lawfully admitted immigrant and would not now have that status.") and *Matter of Montero,* 15 I&N Dec. 399, 401 (BIA 1973) (LPR lost status at point she departed the United States with no fixed intent to return). Case law establishes that no formal proceeding is required regarding LPR status that has been abandoned.

Counsel asserts the 2005 renewal of the applicant's green card is evidence he retained LPR status, but the record reflects that the card was issued in error. The AAO notes that he was present here since 1996 by virtue of admission in B2, nonimmigrant status, and was not admitted as a returning resident. As he lost his LPR status by abandonment, the applicant now seeks to again acquire permanent residence, this time as the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his son. Approval of his Application to Register Permanent Residence or Adjust Status (Form I-485) requires waiver of the inadmissibility for fraud.

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 or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife is a lawful permanent resident and the only qualifying relative in this case. If extreme hardship 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).

[1] As there is no immigrant visa category for the married son of a lawful permanent resident, the applicant's marital status disqualified him from eligibility for a visa, which would not have been issued without his misrepresentation.

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 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.

Regarding relocation, the applicant contends that returning to her native Macedonia would impose extreme hardship on his wife. The applicant offers 2012 and 2013 neurological examinations of his wife to support claims that living in the country she left nine years ago would cause her extreme hardship. He also points to a document purporting to establish lack of property in his birthplace to show that neither he nor his wife has a place to live in Macedonia, but offers no evidence that they would be unable to find accommodations. The record reflects that she is 59 years old, has been a lawful permanent resident since June 2004, and has not worked since 2007 (according to her husband). Her claims to suffer from high blood pressure and rapid heartbeat, as well as deteriorating health in general, remain unsupported by the medical documentation on record, including a follow-up neurological evaluation in which the examining doctor found her vital signs normal. *See* Neurological Evaluations, April 1, 2013 and October 25, 2012. Other than her 32 year old U.S. citizen son who lives at home, the record reflects limited family ties of the applicant's wife to this country, while indicating that she and her husband have an adult daughter[2] and unspecified distant relatives in Macedonia.

The evidence is insufficient to establish that a qualifying relative would experience extreme hardship by returning to Macedonia. Country condition information indicates that Macedonia is a democracy with an improving economy. *See Macedonia–Country Specific Information*, U.S. Department of State (DOS), June 7, 2013. The DOS has issued no recent travel warnings for the country, and there is no evidence the applicant's wife has any conditions for which treatment is unavailable. If she returns to her native country to avoid being separated from her husband due to his inadmissibility, the applicant's wife need not bring along her adult son, and the record indicates she will be moving closer to her daughter. As she has not been employed since 2007, there is no indication that relocating would cause her to forfeit a job or future prospects. While we are not insensitive that such a move would disrupt her life, the evidence does not establish that it represents a hardship that rises to the level of "extreme."

Regarding separation, the applicant's wife contends that thoughts of losing her husband have caused her emotional and physical hardship. Based on the patient's reported symptoms, including fatigue, insomnia, and poor concentration, she was diagnosed with depression and stress due to the applicant's immigration issues. The record reflects that her neurologist has prescribed two anti-depressant medications and recommends ongoing monitoring of her psychiatric symptoms, but gives no prognosis. *See Neurological Evaluations*. There is no documentation for the claim that she receives medical insurance benefits through the applicant's employment that would be lost with his departure or stating the uninsured cost she would incur. The neurologist notes that she is able to carry out normal daily activities despite generalized pain from a 1989 car accident that she treats with nonprescription medication. The record contains letters from the qualifying relative's son, church, and neighbors indicating she has a support network nearby. There is no indication that she would be unable to travel abroad to visit her husband in order to lessen the impact of separation.

[2] The record reflects the applicant's elder child was born in Yugoslavia on October 4, 1979, the N-400 the applicant filed lists Macedonia as his daughter's residence, and a neighbor's letter references this daughter's recent visit from overseas.

Regarding the financial hardship claim, the record reflects that the applicant's wife held a factory job until 2007, but the applicant provides no documentation of her employment or earnings history. There is no indication she is unable to resume her old job or find new employment. Further, other than a printout of prescription medicine costs, the record contains no evidence of the couple's debts or living expenses, and lacks documentation of their claimed mortgage or its amount. The financial record establishes the applicant has worked as a welder for the same employer for 17 years, earning nearly $33,000 in 2011. As noted in our prior decision, the AAO is unable to assess the impact of the applicant's departure without evidence of his wife's past earnings. There is no documentation of the education, training, or employment history of the qualifying relative. Further, although counsel has provided information regarding Macedonia's unemployment rate, the record does not establish the applicant would be unable to find employment and support himself there.[3]

The applicant has failed to establish that his wife is unable to find work to support herself in his absence, that such absence would impose on her any costs of supporting him, or that he would be unable to continue assisting her with living expenses. Further, we note that while the record indicates their son is employed and earns income while sharing a home with his parents, it does not indicate his financial contribution toward household costs.

The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. Her situation, if she remains in the United States, is typical of individuals facing separation as a result of removal and does not rise to the level of extreme hardship based on the record. Therefore, the applicant has not met his burden of establishing his wife would suffer hardship beyond the common results of removal or inadmissibility.

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. resident 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 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 would face rises to the level of "extreme" as contemplated by statute and case law.

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 and, accordingly, the prior decision of the AAO will be affirmed.

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

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[3] we note that the current update of that information states, "Official unemployment remains high at more than 31%, but may be overstated based on the existence of an extensive gray market, estimated to be between 20% and 45% of GDP, that is not captured by official statistics. [...]." *The World Factbook—Macedonia,* Central Intelligence Agency, September 10, 2013.