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

Date: AUG 27 2014 Office: SAN JOSE 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, San Jose, California, denied the waiver application and 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 Vietnam 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. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with her husband and children.

The field office director concluded 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,* October 1, 2013.[1]

Counsel for the applicant asserts that the applicant provided sufficient evidence to meet her burden of showing that extreme hardship to her husband would result from her inability to remain in the United States. In support, counsel provides a brief, but no new evidence. The record contains documentation including birth and marriage certificates, supportive statements, psychological evaluations, financial information, country condition information, and photographs. The record also contains the previous waiver application and appeal, as well as documentation of the applicant's asylum application and related proceedings. The entire record was reviewed and considered in rendering a decision on the appeal.

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 [...].

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[1] The applicant previously filed a Form I-601 and it was also denied because the field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. *Decision of the Field Office Director,* August 23, 2011. An appeal of that decision was dismissed by the AAO. *Decision of the AAO*, April 5, 2012.

The applicant does not dispute that she is inadmissible under the Act for fraud and misrepresentation during her 1997 attempt to procure admission, including presenting as her own a German passport belonging to another person, making untruthful statements under oath during an asylum interview, and continuing these misrepresentations in testimony before an immigration judge. Counsel asserts that changed circumstances, including birth of the twins with whom the applicant was pregnant when she filed her first waiver request, establish that failure to grant her a waiver will cause a qualifying relative extreme hardship.

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. Hardship to the applicant or her children may only be considered to the extent that such hardship causes hardship to a qualifying relative. 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.

As the field office director found that relocation of the applicant's husband to Vietnam would cause him extreme hardship, we consider on appeal only whether the applicant has established that her husband would also experience extreme hardship by remaining here without his wife. Counsel contends that the burden to the applicant's husband of living apart from his wife and of raising his children as a single father would be extreme.

Although children are not qualifying relatives under the Act, USCIS does recognize that a child's hardship can be a factor in determining whether a qualifying relative experiences extreme hardship. Counsel asserts that the hardship to the applicant's husband would be having to raise the twins on his own. The unsupported assertions of counsel do not, however, constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The evidence on record is insufficient to establish that the applicant's husband would not be able to obtain childcare that would allow him to continue working and receive help to raise the children.[2] We note, further, that there is no indication the applicant's adult son has left the family home and that his continued residence represents another adult presence in the home of his half-siblings.

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[2] While it appears that the applicant and her husband foresee their children remaining in the United States with their father if their mother departs, there is no evidence that they are unable to relocate to Vietnam with her, if the parents so choose.

The record reflects that the qualifying relative's annual earnings exceeding $150,000 represent most of the couple's household income. There is no evidence to support his claim that he would be unable to support his wife overseas, while supporting his twin children and adult stepson here. There is no other indication that the applicant's departure will make her husband unable to meet his financial obligations or cause him economic hardship. 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)).

Counsel asserts that the applicant's departure will cause her husband significant emotional hardship, and the evidence shows that he will suffer some hardship from her absence. We therefore examine whether the record establishes that his hardship goes beyond the common or typical result of separation from a family member and rises to the level of "extreme." The applicant's husband states that, before meeting the applicant in July 2005, his life focused on his work as a software engineer, he had a limited social life, and he began to feel as if he would never marry or have children. He characterizes meeting the applicant as life-changing, and they married two years later. Counsel claims that two psychological evaluations establish that a qualifying relative's emotional functioning would be severely impacted by the applicant's departure.

In 2010, a psychologist noted after interviewing the applicant's husband that, because of the 2004 rupture of a four-year relationship (for which no details are provided) and two prior unspecified losses of loved ones, he has a history of strong adverse psychological reactions to such losses, including lowered work performance and isolating himself socially for two years. The evaluation concludes that the applicant's husband would be deeply affected emotionally by his wife's absence, but fails to state a specific diagnosis. There is no documentation to support the claim that his work was affected, and we note that the applicant's husband characterizes himself as someone who chooses not to socialize much. In 2013, after two meetings involving an interview as well as testing, another psychologist diagnosed the applicant's husband with acute anxiety disorder related to having encountered uncontrollable events that disrupted the order he imposes on his life to compensate for poor coping mechanisms. This evaluation states that, if separated from his wife, his anxiety symptoms are likely to develop beyond restlessness, tension, and agitation to include jumpiness, palpitations, fatigue, and gastrointestinal upset.

While acknowledging the evaluations' finding that the applicant's husband would be distressed by the applicant's inability to remain here, as well as the concern that he would find it difficult to be a single parent, we find the evidence insufficient to show that his discomfort would rise to the level of extreme emotional hardship. There is no documentation of any performance issues at work, of health problems caused by worry for his wife,[3] or of ways that current concerns are adversely affecting his daily functioning. There is no indication that the applicant's spouse was unable to care for himself before meeting the applicant or that his ability to do so again will deteriorate without the applicant to care for him and to provide him with companionship. Therefore, while sensitive that his

[3] Despite references to a suicide attempt by the applicant before she met her husband, and her husband's concern that she might make another attempt if forced to depart, there is no documentation on record of the claimed attempt.

wife's departure will disrupt the orderliness of the qualifying relative's daily life, we conclude based on the record that such disruption represents a typical consequence of removal or inadmissibility. Nor is there evidence that the applicant's absence will cause such hardship to any of her children as to result in extreme hardship to her husband.

For all these reasons, while we recognize that the applicant's absence would cause emotional hardship to her husband, there is insufficient evidence that the cumulative effect of the emotional and financial hardships to him due to his wife's inadmissibility would rise to the level of extreme. We conclude based on the evidence provided that, were her husband to remain in the United States without the applicant due to her inadmissibility, he would not suffer hardship beyond those problems normally associated with family separation.

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.

The documentation on record, when considered in its totality, reflects the applicant has not established that her spouse will suffer extreme hardship if she is unable to live in the United States. We recognize that the applicant's husband will endure hardship as a result of the applicant's inability to immigrate. However, his situation is typical of individuals affected by removal or inadmissibility, and we thus find that the applicant has failed to establish extreme hardship to her husband as required under the Act. Having again found the applicant statutorily ineligible for relief under the Act, no purpose would be served in discussing whether she 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 appeal is dismissed.