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)

[redacted]

Date: FEB 2 5 2014 Office: OAKLAND PARK, FL FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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, Oakland Park, Florida, 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 Peru who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends, among other things, that the applicant's silence regarding his divorce to his ex-wife does not constitute willful misrepresentation because he was unaware his ex-wife had divorced him. In addition, counsel contends the applicant's current wife will suffer extreme hardship if the waiver application is denied, particularly considering her health problems.

The record includes, but is not limited to, the following documents: a copy of the marriage certificate of the applicant and his wife, [redacted], indicating they were married on February 13, 1999; affidavits from the applicant; copies of [redacted] medical records; letters from the couple's employers; copies of tax returns, bills, and other financial documents; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

> 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 Act is inadmissible.

Section 212(i) provides, in pertinent part:

> (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . . .

In this case, the record shows that the applicant married a U.S. citizen, on May 19, 1995, and that they divorced on September 27, 1995. The record indicates that on April 22, 1996, the applicant filed a Form I-485 concurrently with Ms. filing of a Form I-130 on the applicant's behalf. The record further shows that during the couple's interview on November 13, 1996, neither the applicant nor Ms. indicated they were divorced. The record shows the applicant married his current wife on February 13, 1999. By letter dated April 3, 2000, the applicant "request[ed] the cancellation of the pending petition for alien relative from my wife as we are in the process of filing for divorce. As it is obvious, I would appreciate closing my file, since I will no longer be married to the petitioner."

The applicant concedes that he and Ms. were legally divorced on September 27, 1995, but contends that "he had no knowledge of the divorce until years later." According to the applicant, over the course of their marriage, "Ms. gave him various documents to sign; however, as he couldn't read English, he frequently didn't know what he was signing." The applicant also contends he never attended any court hearing related to the divorce and was never provided a copy of the divorce decree. He states he had no intention to misrepresent any fact to USCIS. *Affidavit by* dated October 29, 2009. On the Form I-601, the applicant asserts that when he was getting ready to marry his current wife, he told her he did not know if he was divorced so they "went to the court house in 1999 to check on the records, and apply for a marriage license. Only then did [he] see the divorce record." The record contains an earlier affidavit, dated July 31, 2000, which states:

> In 1998, . . . I found out that I was divorced, that my previous wife had already divorced me without my knowledge . . . . In December 1998, I met [my current wife], and we married in February 1999. I went to the paralegal that had filed my paperwork to tell her to close my case, since I was no longer married to [Ms. . The paralegal listened to me as I explained in Spanish. She typed up a letter to close the case . . . [and] I signed it without really reading it.

According to the applicant, if he had read the statement, he would have realized it was wrong and corrected it because he was already married to his current wife. *Affidavit by* dated July 31, 2000.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . . ."). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant has not met his burden of proving he is not inadmissible under section 212(a)(6)(C)(i) of the Act. The record contains a copy of the Petition for Dissolution of Marriage signed by Ms. on July 31, 1995, and filed with the State of Florida, Circuit Court. The record also contains a copy of the applicant's Answer and Waiver, which he signed on August 21, 1995, indicating that the marriage is irretrievably broken, and filed with the Circuit Court. In addition, the record contains a copy of the Final Judgment signed by the Circuit Judge on September 27, 1995, which indicates that a copy of the Final Judgment was sent to the applicant at " This address is listed on the applicant's April 5, 2000 Biographic Information form (Form G-325A) as his residence from May 1995 through June 1998, as well as on his Form I-485 which he signed on April 12, 1996. Therefore, the record shows that the applicant filed an answer to the divorce petition and received a copy of the final divorce decree. The applicant's assertion that a paralegal wrote the April 3, 2000 letter and simply made a mistake by indicating that he and his ex-wife were in the process of filing for divorce, is unsupported by any evidence. Even if the applicant signed the Answer and Waiver as well as the April 2000 letter without understanding their meaning, the applicant has not provided an explanation for why he did not receive a copy of the final divorce decree which was sent by a courthouse to his correct address. Furthermore, the applicant's contention on his Form I-601 that he learned of the divorce in 1999 when he allegedly went to the court house with his current wife to apply for a marriage license is inconsistent with his July 31, 2000 affidavit which indicates he learned of the divorce in 1998 and, notably, does not mention that his current wife went to the courthouse with him to inquire about his marital status. The applicant has not provided any independent, competent, or objective evidence to support his claims. As such, the applicant has not met his burden of proof. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

After a careful review of the entire record, there is insufficient evidence to show that the applicant's wife, Ms. [redacted] will suffer extreme hardship if the applicant's waiver application were denied. Significantly, there are no statements or letters in the record from the applicant or his wife addressing hardship. Furthermore, neither the applicant nor his wife discusses the possibility of her relocating to Peru to avoid the hardship of separation and whether such a move would amount to extreme hardship. Although the record contains documentation showing that the applicant's wife had a motor vehicle accident that resulted in low back pain in 2012, had a meniscal tear in her left knee in 2011, and has been prescribed some prescription medications, there is no letter in plain language from a health care professional addressing the diagnosis, prognosis, treatment, and severity of the applicant's wife's medical problems. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed. To the extent the record contains financial documents, the applicant has not made a financial hardship claim and, in any event, the record shows the applicant's wife is a registered nurse who has filed several Affidavits of Support Under Section 213A of the Act (Form I-864), affirming she would financially

support the applicant. *See Affidavit of Support under Section 213A of the Act (Form I-864)*, dated July 3, 2008 (indicating her annual salary as $47,579); *Affidavit of Support under Section 213A of the Act (Form I-864)*, dated November 20, 2007 (indicating her annual salary as $50,560); *Form I-864*, dated April 5, 2000 (indicating her annual salary as $45,085). Although the AAO is sympathetic to the couple's circumstances, the record does not show that the applicant's situation is unique or atypical compared to other individuals in similar circumstances. *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). Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that the hardship the applicant's wife would experience amounts to extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. 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.

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.