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: JAN 0 3 2014 Office: NEW YORK, NY [redacted]

IN RE: [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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York. 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 waiver application approved.

The applicant is a native and citizen of Trinidad and Tobago 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 is the son of U.S. citizens. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife, his parents, and his children in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. The AAO dismissed the appeal, also finding that the applicant failed to establish extreme hardship to a qualifying relative. Counsel now files a motion to reopen and submits new evidence in support of the motion.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, counsel has submitted a letter and new documentary evidence to support the applicant's waiver application. The applicant's submission meets the requirements of a motion to reopen. Accordingly, the motion is granted.

In addition to the evidence already described in the AAO's previous decision, the record also contains: an updated letter from the applicant's wife, an updated letter from the applicant's father, a letter from physician; a letter from the applicant's mother's physician; copies of medical records; a letter from the applicant's church; a copy of the U.S. Department of State's Country Specific Information for Trinidad and Tobago, and other background materials. The entire record was reviewed and considered in rendering this decision on motion.

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 AAO previously found 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. Counsel does not contest this finding of inadmissibility on motion.

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, including the additional evidence submitted on motion, the AAO finds that the applicant's wife, will suffer extreme hardship if the applicant's waiver application were denied. A new, signed statement from describes that she is "simply unable to deal with the prospect" of her husband departing the United States. She describes the on-going counseling she has been receiving from her church. A letter from her church corroborates this claim and describes the applicant's immigration situation as "times of trauma" for These new documents submitted on motion supplement the psychological evaluation in the record that diagnoses with Posttraumatic Stress Disorder, Dysthymia, Major Depressive Disorder, and Generalized Anxiety Disorder, primarily as a result of the extreme poverty as well as physical, sexual, emotional, and verbal abuse she experienced while growing up in Trinidad. was reportedly physically beaten, repeatedly sexually abused between the ages of eight and thirteen, and dropped out of school at the age of eleven in order to sell items on the street. According to the social worker, "can never return to live in Trinidad" because of the brutality she suffered there. In addition, the record shows that has lived in the United States for the past thirty-one years, since she was sixteen years old. would need to readjust to living in Trinidad after having lived her entire adult life in the United States, a difficult situation made even more complicated given the history of abuse she suffered and the resulting mental health issues from which she continues to suffer. Moreover, the applicant has submitted evidence addressing country conditions in Trinidad and Tobago, and the AAO takes administrative notice that the U.S. Department of State describes the high rate of violent crime on both islands, including assault, kidnapping for ransom, sexual assault, and murder. *U.S. Department of State, Country Specific Information, Trinidad and Tobago,* dated May 09, 2013. Considering all of these factors cumulatively, the record establishes that the hardship s would experience if she returned to Trinidad and Tobago to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

The record also establishes that if remains in the United States without her husband, she would suffer extreme hardship. As stated above, the record contains documentation addressing Ms. history as a victim of physical and sexual abuse and her on-going mental health issues. According to the social worker, is dependent on her husband in every aspect of her life, to the extent that she needs to speak to him multiple times during the day to get his input regarding simple, everyday matters, and has difficulty doing things on her own due to a lack of self-confidence. reported that she fears she may harm herself if she were separated from her husband and does not believe she can cope without him. The record also contains evidence that has worked as a nanny for the same family for over twelve years, earning $280 per week. The record therefore shows the difficulties would experience as a single parent to the couple's son, who is currently eleven years old, with limited income, particularly considering her mental health issues. Considering these unique circumstances cumulatively, the record establishes that the hardship the applicant's wife would experience if she remains in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The applicant also merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include: the applicant's willful misrepresentation of a material fact in order to procure an immigration benefit; the continued use of a fraudulent identity; periods of unauthorized employment; and a conviction for disorderly conduct in March 2000. The favorable and mitigating factors in the present case include: the applicant's ties to the United States, including his U.S. citizen wife, son, parents, and other relatives; the extreme hardship to the applicant's entire family if he were refused admission; and the applicant's lack of any additional arrests or criminal convictions for the past thirteen years.

The AAO finds that, although the applicant's immigration violations and conviction are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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 been met.

ORDER: The motion is granted and the waiver application approved.