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 2 4 2014 Office: MT. LAUREL, NJ 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, Mt. Laurel, New Jersey, 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 Russia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact in order to obtain 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 her husband 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 the applicant established extreme hardship to her husband and submits additional evidence in support of the waiver application.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, Mr. , indicating they were married on November 1, 2011; an affidavit from the applicant; letters and an affidavit from Mr. , letters from a social worker; copies of medical records; a letter from Mr. former employer; a letter from Mr. sister; copies of bills and tax documents; a copy of the U.S. Department of State's Country Specific Information for Russia and other background materials; 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, and the applicant concedes, that she entered the United States in December 2010 by making material misrepresentations on her non-immigrant visa application.

Specifically, the applicant concedes she "submitted misleading documents including: job letter [and a] photocopy of a passport of a fictitious husband, who allegedly was traveling with [her]. . . ." *Affidavit of* dated October 8, 2012. Therefore, 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.

In this case, the applicant's husband, Mr. states that he is so depressed and traumatized about his wife's immigration problem that he needs weekly counseling sessions, has had several repeat peptic ulcers due to stress, and had to leave his job and go on disability due to anxiety attacks and breathing problems. According to Mr. he has had a long history of medical conditions since early childhood. He contends he had two hernia operations when he was eighteen years old, was involved in a serious automobile accident when he was nineteen years old that required two years of physical therapy and acupuncture, and was diagnosed with gastro esophageal reflux disease (GERD) when he was twenty-four years old. He contends he has been prescribed several different medications for his ulcers and depression, that he sees a gastroenterologist monthly, and that his wife makes sure he takes his medications and eats his recommended diet. He contends he could not manage his conditions alone and that after every meal, he feels the pain of GERD as his throat tightens, he has trouble breathing, and he feels dizzy to the point that he sometimes blacks out. In addition, Mr. states he is not the same person he was when he married his wife because he no longer smiles, laughs, or has emotions. Furthermore, Mr. contends he is afraid to leave the United States if his wife is removed. He asserts that his physiologist constantly warns him that if he leaves the United States, he may get improper medication. In addition, Mr. claims he would not have health insurance in Russia and would be unlikely to find a job in Russia. Moreover, Mr. who was born in Russia, contends he has lived in the United States since he was five years old and his entire family and his close friends live in the United States. He states he has trouble understanding and speaking Russian, and does not read or write in Russian. Mr. further claims he takes care of his grandmother who has a heart problem and that there is no one else to take care of her. Additionally, Mr. states that Russia has a high crime rate which creates much anxiety for him.

After a careful review of the record, there is insufficient evidence to show that the applicant's husband, Mr. will suffer extreme hardship if the applicant's waiver application were denied. If Mr. decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding emotional and psychological hardship, the record contains letters from a social worker describing Mr. anxiety and depression. Although the AAO is sympathetic to the couple's circumstances, nonetheless, there is insufficient evidence to show that their 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). To the extent the record shows that Mr. resigned from his job citing his "unstable and emotional state of mind," there is insufficient evidence showing his emotional or psychological issues were causing him any problems at work or that his work had suffered in any way. The record shows that the applicant filed her waiver application on October 11, 2012. However, the record shows that Mr. had already concluded that he could not function at work prior to the applicant's filing of her application. *Letter from Social Worker*, dated October 8, 2012 ("He stated to this manager that he was not in any condition to function at work . . . . [The manager] stated that Mr. should not leave the job [and] is willing to accommodate his work situation until this matter is resolved."). A letter from his employer indicates that Mr. resigned from his job because he was "increasingly stressed" and wanted to "allot the time needed to deal with the issues caused by his wife's immigration status." *Letter from* undated. Although the AAO does not doubt that the uncertainty of his wife's immigration case causes stress, the record does not contain sufficient documentation to show that Mr. psychological state required him to quit his job or that the stress caused him any performance problems at work. *See, e.g., Letter from Social Worker*, dated June 24, 2013 ("he notes that he has been unable to function [at work] . . . . His boss has given him the opportunity to take some time off because he has been a valued employee."). In addition, the record shows that Mr. requested leave under the Family Medical Leave Act (FMLA); however, his request was denied due to insufficient documentation. *Employer Response to Employee Request for Family Medical Leave*, dated September 11, 2013 (stating that the request did not include a certification from a health care provider and did not indicate a category for the purportedly serious health condition). The record does not show whether or not Mr. attempted to address the deficiencies in his request for leave under the FMLA, but rather, it appears he voluntarily resigned from his position altogether. The record also contains an application for State of New Jersey Temporary Disability Insurance, but there is no indication that the application was approved.

Regarding Mr. medical problems, although the record contains copies of medical records showing that he has been diagnosed with GERD and has a history of ulcers, there is no letter in plain language from any health care professional addressing the diagnosis, prognosis, treatment, or severity of either diagnosis. 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.

Furthermore, regarding financial hardship, although the record shows several overdue bills and letters from collection agencies, the record does not show Mr. hardship to be extreme, atypical, or unique, particularly considering he voluntarily resigned from his job and most of the overdue bills show that the applicant accrued the debt during a single emergency room visit prior to the couple's marriage. *See, e.g., Letter from* dated January 4, 2012 (stating that applicant owes $267.12 for services rendered on July 16, 2011); *Letter from* dated August 31, 2011 (stating the applicant owes $713 for an emergency department visit on July 16, 2011); *Letter from* dated August 25, 2011 (stating the applicant owes $2,226 for service provided on July 16, 2011). In addition, there is no evidence addressing the couple's regular, monthly expenses, such as rent or mortgage. Even considering all of the factors in the case cumulatively, there is

insufficient evidence showing that if Mr. remains in the United States, the hardship he will experience amounts to extreme hardship.

Furthermore, the record does not show that Mr. will suffer extreme hardship if he relocates to Russia to avoid the hardship of separation. The record shows that Mr. was born in Russia, is currently twenty-eight years old, and has a high school diploma. According to the applicant's Biographic Information form (Form G-325A), dated May 1, 2012, both of her parents continue to live in Russia. Mr. contentions that he would have to leave his employment and all of its benefits, including health insurance, are moot considering he has already resigned from his job. Regarding his contention he would be unlikely to find employment in Russia, although the record contains documentation addressing the unemployment rate in Russia and other background materials addressing country conditions, there is no evidence any difficulties he may experience are unique or atypical compared to others in similar circumstances. *See Perez, supra*. There is also no evidence that his wife would be unable to obtain employment in order to support the family. With respect to caring for his grandmother, there is no evidence in the record to corroborate this claim despite the fact that Mr. sister submitted a letter for the record, and, according to Mr. himself, he lives in New Jersey and visits his grandmother in Florida only every two months. As such, he is not her primary caretaker. In any event, the only qualifying relative in this case is Mr. and the record does not show that any hardship his grandmother may experience would cause hardship to Mr. that is atypical or unique. The letter from Mr. sister does not address how often they see each other and aside from letters from former co-workers, there are no other letters of support in the record and no evidence Mr. has any significant ties in his community. To the extent Mr. contends in his October 8, 2012 affidavit that he is extremely close to his mother and that he cares for her both financially and physically, Mr. September 25, 2013 statement directly contradicts this assertion, stating that his mother "continues to be separated from the family." With respect to Mr. fears of persecution if he returns to Russian, there is no evidence to corroborate or substantiate this contention. Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that the hardship the applicant's husband would experience if he returned to Russia amounts to extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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 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.