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)

DATE: MAY 19 2014 Office: MT. LAUREL File:

IN RE: Applicant:

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act (the 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, Mt. Laurel, New Jersey, denied the waiver application, as well as a subsequent Motion to Reopen or Reconsider the waiver denial, and the Administrative Appeals Office (AAO) dismissed an appeal. The matter is again before the AAO on motion to reconsider. The motion will be granted and the underlying decision affirmed.

The applicant is a native and a citizen of Indonesia 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 or attempting to procure an immigration benefit by fraud or misrepresentation. The applicant contests the inadmissibility finding, but alternatively seeks a waiver of inadmissibility in order to remain in the United States as the beneficiary of an approved Petition for Alien Relative (Form I-130).

The field office director found that the applicant failed to establish that the bar to her admission would result in extreme hardship to her U.S. citizen husband and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly, and denied the applicant's subsequent motion. *Decisions of the Field Office Director* dated July 29, 2011 and January 30, 2013. In dismissing the applicant's appeal, the AAO agreed that the applicant was inadmissible, as well as that the record evidence did not show the requisite extreme hardship as a result of the applicant's inadmissibility. *Decision of the AAO*, November 6, 2013.

On motion, counsel continues to assert that it was error first, to find the applicant inadmissible and, second, in concluding the applicant had not established extreme hardship to her qualifying relative. Besides claiming the waiver denial was based on legal error in that the AAO failed to properly weigh the hardship evidence, counsel also offers new evidence on the hardship issue. In addition to a brief supporting the motion, counsel provides an updated hardship statement and supportive statements, IRS correspondence, documentation of overseas remittances, country condition information, evidence of family ties, and photographs. This evidence supplements extensive documentation provided with previous applications, motions, and petitions. The entire record was reviewed and considered in reaching this decision.

The applicant claims that her misrepresentation to a consular officer that she was married, rather than single, was not material because she had sufficient equities to have been issued a visa without the misrepresentation and because USCIS failed to show she would not have been issued a visa. The record reflects that, after being interviewed, the applicant was issued a five-year, multiple entry, B1/B2 nonimmigrant visa (NIV) on May 3, 2001. The record also shows that the applicant knew marital status and economic means were factors in consular decisions regarding visa issuance, that she acted on the advice of a travel agency to which she paid nearly $3,000, that she and the person posing as her spouse appeared together at their NIV interview, and that the deception was perpetrated to increase the chance of receiving a visa.

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 shows that, on May 21, 2001, the applicant procured U.S. admission in B2 status using a visa issued based on an application stating she had been married in Indonesia. Later seeking immigration benefits as the spouse of a U.S. citizen, she claimed not to have been married previously. After investigating the contradictory claims, USCIS determined the Indonesian marriage had never occurred, the false claim represented an attempt to procure a visa by fraud, and the applicant was thus inadmissible. While admitting the misrepresentation, the applicant claims that it was not material and therefore incurs no inadmissibility.

A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded. *See Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 19610.

The record reflects that, besides misrepresenting herself as married, the applicant presented false financial documents at her interview to support her claim to be a tourist, a story she later recanted at her adjustment interview and in written statements in which she admitted coming to the United States to work. The record indicates that the applicant did not simply check the wrong box on her NIV application and maintain that falsehood at her interview. The applicant admits appearing for her visa interview with an impostor husband whom she paid for his services, obtaining a fraudulent marriage certificate using posed photos, presenting false documentation of financial resources showing she had funds in the bank she would be coming back for, and professing a desire to visit the United States temporarily for tourism.

Section 291 of the Act provides, in pertinent part:

> [T]he burden of proof shall be upon [any person applying for a visa or for U.S. admission] to establish that he is eligible to receive such visa ..., or is not inadmissible under any provision of this Act, and ... that he is entitled to the nonimmigrant ... status claimed.... If such person fails to establish to the satisfaction

> of the consular officer that he is eligible to receive a visa..., no visa... shall be issued to such person, nor shall such person be admitted to the United States unless he establishes to the satisfaction of the Attorney General [now, Secretary of Homeland Security] that he is not inadmissible under any provision of this Act.

As counsel acknowledges, among the factors to be considered in making visa decisions are whether the applicant has a foreign residence she does not intend to abandon, whether she intends to enter the United States for a specifically limited duration, and whether she seeks to visit solely for the purpose of business or pleasure. *See* 9 FAM 41.31 N1. Pursuant to section 214(b) of the Act, a nonimmigrant visa applicant "shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to nonimmigrant status...." In the applicant's case, the consular officer could have declined to issue a visa because the applicant lacked sufficient financial or spousal ties to her country, because she intended to find a job and send money home to her family, or simply because she had not overcome the presumption of intending immigration that applies to all NIV applicants. The applicant's misrepresentations shut off potential lines of inquiry regarding ties to her country, purpose for traveling, and eligibility for a nonimmigrant visa, and are therefore material under the standard set forth by the Supreme Court in *Kungys*: they were "predictably capable of affecting" the consular decision, consistent with applying the FAM factors noted above to the facts on record.[1]

As the applicant's material misrepresentations make her inadmissible under section 212(a)(6)(C)(i) of the Act, she requires a waiver in order to adjust status to that of lawful permanent resident and remain here with her husband.

A waiver of inadmissibility under section 212(i)(1) 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. 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 applicant has established extreme hardship to a

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[1] The AAO has not stated that disclosure of the misrepresented information would have resulted in a consular denial, as counsel asserts in citing *So Yen Lee,* 43 F.3d 1483 (10th Cir. 1993), but rather follows *Kungys* and the BIA's two-part test of materiality which it left undisturbed. The record shows that the applicant's elaborate deception – appearing at her interview with a putative husband, professing a desire to visit the United States for tourism, providing false documentation of financial means for the trip, even enlisting a priest's help to procure a false marriage certificate – was designed to bolster her bona fides as a claimed nonimmigrant in order to hide her true purpose of entering the country to live and work, which she later admitted.

qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

Regarding whether the applicant has established that her husband would suffer extreme hardship by relocating to Indonesia, counsel claims that moving would sever the qualifying relative's strong U.S. ties and entail difficulty adjusting to life in Indonesia due to lack of cultural knowledge, language fluency, and employment prospects. The applicant's husband also states concern that he would suffer persecution as a Christian in a predominantly Muslim country. Newly-provided evidence supports the claimed family ties and cultural, religious, and linguistic barriers to adjustment in his wife's country. Documentation establishes his ties to his New Jersey community, including his workplace of many years, and that he maintains a close bond with his adult son and his son's family, as well as three siblings and their families. Official U.S. government reporting notes that Indonesia is over 87% Muslim and that English is not widely spoken. *See* Human Rights Report for 2012, U.S. Department of State (DOS); International Religious Freedom Report for 2012, DOS; CIA World Factbook—Indonesia, April 14, 2014; and DOS Fact Sheet—Indonesia, April 18, 2013. For all these reasons, we find the record now shows that moving to Indonesia would impose extreme hardship on a qualifying relative.

On the issue of hardship from separation, the applicant has not produced evidence that her inability to remain in the United States would impose on her husband hardship that goes beyond the normal or typical consequences of a family member's absence. Regarding the claim of emotional hardship, the record reflects that she and her husband married in 2007 and reside together. While the AAO acknowledges the qualifying relative's contention that he will miss the companionship of his wife if he remains in the United States without her, the record does not establish the severity of this hardship. There is no documentation supporting the claim that he would be unable to work without his wife's support. While we acknowledge his employer's statement that a supportive partner at home is an asset to the employee, the applicant's husband started this job several years before marrying the applicant in 2007 and there is no evidence that the impact of losing this support would so exceed the common result of separation from a spouse or family member at to rise to the level of "extreme." The qualifying relative's claims to have experienced weight loss, insomnia, and distraction at work due to worry about the applicant's immigration status are unsubstantiated by the record. The applicant has not shown that returning to the country she left in 2001 at the age of 36 would threaten her personal safety. There is no indication of any specific threat to her or her relatives in Indonesia, or that the area to which she would relocate is experiencing security issues.

Regarding the financial impact of the applicant's departure, the record shows no financial contribution by the applicant toward household income, and tax returns establish the applicant's husband as the sole wage earner. Although the record contains the applicant's 2009-2010 work permit, the only documentation she has ever earned income is an IRS Form 1099-MISC showing less than $4,000 of non-employee compensation in 2002. Counsel provides receipts from the applicant's husband showing remittances during a nearly five-year period beginning in 2009 to a person in Indonesia. The AAO notes that these transfers reflect the qualifying relative's ability to support his wife overseas. The record thus fails to show that the applicant's presence will lessen her husband's financial burden and make him better able to meet his financial obligations, or that her absence will impair his economic situation. There is no indication the qualifying relative lacks the economic resources to visit his wife overseas to ease the pain of separation.

For all these reasons, the cumulative effect of the emotional and financial hardships the applicant's husband will experience due to the applicant's inadmissibility does not rise to the level of extreme. The AAO concludes 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. The AAO recognizes 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 based on the evidence on the record, the applicant has failed to establish extreme hardship to her husband as required under the Act.

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 prior decision dismissing the appeal is affirmed.