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

[redacted]

Date: MAY 21 2014 Office: NEWARK FIELD OFFICE FILE: [redacted]

IN RE: Applicant: [redacted]

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:

[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,

for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, 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 Ecuador 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 attempting to procure admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated September 23, 2013.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that new information is being submitted to show the applicant was not at the U.S. Embassy in Ecuador applying for a visa extension as alleged by the director. Counsel also asserts the applicant's qualifying relatives would suffer extreme hardship if the applicant is ineligible to live in the United States. With the appeal counsel submits a brief, a statement from the applicant's spouse, a prescription notice from a medical doctor, and statements from friends in support of the applicant. The record also contains statements from the applicant and her father, financial documents, and other evidence submitted with the Application to Adjust Status (Form I-485). The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (i) 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) of the Act provides that:

> The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

On appeal counsel contends that the applicant was not at the U.S. embassy in Ecuador applying for a visa renewal, but that her passport was stolen by a roommate without the applicant's knowledge in

an attempt to bring a relative to the United States. In a statement submitted on appeal, an individual residing in Ecuador claiming to be the applicant's former roommate claims he took the applicant's passport without her knowledge in an effort to help a cousin trying to enter the United States. He states that he had been told by smugglers that if he provided a passport with a visa they could substitute the photograph. He further states that after the attempt to get a visa was unsuccessful he returned the passport to the applicant through a friend and the applicant did not know. Counsel also submits a statement from a woman claiming that from January until March 2003 the applicant babysat for her daughter every day, and thus the applicant was not out of the United States in February 2003 to apply for a U.S. visa in Ecuador. The applicant states that she has not left the United States since her 2001 entry and did not know until renewing her passport in the United States that the U.S. visa in her passport was stamped as cancelled. No evidence has been submitted to the record to establish that the person claiming to have taken the applicant's passport was ever in the United States and resided with the applicant.

The record contains inconsistent statements from the applicant about when she lost her passport. In a sworn statement at her August 2012 interview for her application to adjust status the applicant stated that her passport had been lost six or seven years earlier. On her waiver application, signed in September 2012, the applicant stated that she did not know her passport contained a cancellation stamp over her U.S. visa until she was renewing the passport in May 2012, which would indicate she was in possession of the passport at that time rather than having lost it years earlier, as she had previously stated. The applicant further stated on her waiver application that her original passport with the U.S. visa was lost "shortly after my passport was renewed." Further, the applicant stated on her waiver application that she had made copies of some pages of her passport before it went missing, however she presented only a copy of the page containing the cancelled visa stamp, but no additional pages such as the biographical data page. The applicant's inconsistent statements about the whereabouts of her passport and when she discovered it had been lost call into question the veracity of her explanation of how her passport was used to apply for a visa in 2003.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). As the applicant has not submitted sufficient evidence to demonstrate that she is not inadmissible for misrepresentation, it is found that she is inadmissible under section 212(a)(6)(C)(i) of the Act.

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. The applicant's U.S. citizen spouse and lawful permanent resident father are the qualifying relatives 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 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. *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)); *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.

The AAO finds that the record fails to establish that the applicant's qualifying relatives will suffer extreme hardship as a consequence of being separated from the applicant. Counsel asserts that separation might doom the applicant's marriage. The applicant states that the spouse will be emotionally crushed and the spouse states that the applicant is trying to conceive, but because of an underlying medical condition is attempting fertility treatment and is considered at high risk of pregnancy loss.

A handwritten note, apparently from the applicant's medical doctor, indicates that she has a condition that needs monitoring and needs another procedure. However, no explanation has been submitted to the record that explains the applicant's condition, the procedure she is undergoing, or the prognosis. Without more detail or explanation, the AAO is not in the position to reach conclusions concerning the applicant's medical condition or treatment. Moreover, the record contains no detail or supporting evidence explaining the exact nature of the spouse's emotional hardships and how such emotional hardships are outside the ordinary consequences of removal.

In a previous statement the spouse stated that he and the applicant share financial obligations so he would struggle without her. The applicant states that her spouse would suffer financial hardship because she contributes to the rent. Financial documents submitted to the record include an expired rental agreement, bank statements, tax returns, and W-2s for the spouse. However, the documentation does not show the spouse's expenses, assets, liabilities or overall financial situation, or the applicant's contribution, to establish that without the applicant's physical presence in the United States the applicant's spouse will experience financial hardship. The evidence in the record is insufficient to establish that the applicant's spouse will experience extreme hardship as a result of separation from the applicant.

Counsel asserts that the applicant's father would suffer emotional trauma if the applicant is ineligible to live in the United States, where his other children reside. The applicant's father states that it would be traumatic for the family in the United States because separated family members are constant targets of robbery and extortion in Ecuador, where the applicant has no other family.

The AAO recognizes that the applicant's spouse and father will endure hardship as a result of separation from the applicant. However, their situation if they remain in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The difficulties that they would face as a result of separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

The AAO also finds the record fails to establish that the applicant's spouse or father would experience extreme hardship if they were to relocate to Ecuador. Statements from the applicant, her spouse, and her father indicate that those with relatives in the United States could be targeted for robbery and extortion in Ecuador, but nothing has been submitted to the record specifically

addressing any hardship to the qualifying relative spouse and father were they to relocate to Ecuador. The record does not contain any country condition evidence and fails to address where the applicant would live if she returned to Ecuador, and thus does not establish that the qualifying relatives would experience extreme hardship were they to relocate abroad to reside with the applicant due to her inadmissibility.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her qualifying spouse or father as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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.