U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

Date: NOV 10 2014 Office: BALTIMORE FILE:

IN RE: Applicant:

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:

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 waiver application was denied by the District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, a native of Algeria and citizen of Egypt, 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 admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with his U.S. citizen.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the District Director,* September 16, 2013.

On appeal, filed on October 21, 2013 and received by the AAO on June 2, 2014 counsel contests the applicant's inadmissibility for misrepresentation, and asserts that the U.S. Citizenship and Immigration Services (USCIS) abused its discretion by making arbitrary and capricious findings, failing to give proper weight and consideration to evidence on the record, disregarding the facts, shifting and raising the evidentiary burden, raising new issues in the final decision denying the applicant the opportunity to rebut, and misstating and exaggerating the record.

The record includes, but is not limited to, the following documentation: a brief by counsel in support of the Form I-290B, Notice of Appeal or Motion; a memorandum by counsel in response to the notice of intent to deny the applicant's I-485, Application to Register Permanent Residence or Adjust Status; a rebuttal statement by the applicant in response to the notice of intent to deny his Form I-601; affidavits from the applicant and the applicant's father regarding the applicant's nonimmigrant visa application of December 7, 1999; a statement by the applicant's spouse; criminal documentation for the applicant's spouse; financial documentation; letters of reference; and country-conditions information on Egypt. 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.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record indicates that the applicant applied for a nonimmigrant B1/B2 visa at the U.S. Consulate in Cairo, Egypt on December 7, 1999. The Department of State Optional Form 156, Nonimmigrant Visa Application (Form OF-156) submitted to the consular section indicates the applicant's marital status as "married," lists his spouse's name as ' ' and his spouse's nationality as "Egyptian." Counsel contends that the applicant could not read or speak English at the time he applied for a visa, that his father completed the application on his behalf, and that the applicant is therefore not inadmissible for having made a willful misrepresentation of a material fact in his visa application.

The applicant submitted an affidavit dated July 1, 2010, in which he states that he went to the U.S. Embassy in Cairo with his father and his father's friend, that his father entered the U.S. Embassy with him, and that his father also applied for a visa at the same time. He states that his father completed the Form OF-156 for him. The applicant states that he did not read, write, or understand English, and that neither his father nor his father's friend translated the visa application for him. He states that since his father spoke English, his father responded to questions from the consular officer on his behalf. The applicant further states that in 2006, while in immigration proceedings, he first learned that the Form OF-156 stated that he was married at the time of his visa application, and that he contacted his father at this time, and his father told him that if the application had indicated that the applicant was single, the visa would have been denied.

The record further includes an affidavit from the applicant's father dated October 1, 2006. The applicant's father states that the he completed the Form OF-156 and indicated that the applicant was married. He further states that at the time he submitted the application, the applicant did not know the he indicated that his son was married.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality.

USCIS interprets the term "willfully" as knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the factual claims are true. To determine whether a misrepresentation was willful, we examine the circumstances as they existed at the time of the misrepresentation, and we "closely scrutinize the factual basis" of a finding of inadmissibility for fraud or misrepresentation because such a finding "perpetually bars an alien from admission." *Matter of Y-G-*, 20 I&N Dec. 794, 796-97 (BIA 1994) (citing *Matter of Shirdel*, 19 I&N Dec. 33, 34-35 (BIA 1984)); *see also Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979). In this matter, the record indicates that the applicant attended his visa application interview. Although the applicant and his father claim that it was the father who stated that the applicant was married, this does not overcome the fact that the applicant was an adult at the time he presented his passport and application to the interviewing officer, and he was legally responsible for any representation made before a U.S. government official. There is no objective evidence in the record to establish that the applicant did not know that his Form OF-156 stated that he was married. The record includes the affidavit submitted by the applicant's father stating that the applicant did not know his father indicated that he was married. However, there are no details included in this affidavit. The applicant's father fails to provide the reason that he stated that the applicant was married, and fails to provide any details regarding the application process and the interview itself, what questions were

asked, and whether any questions were directed to the applicant. Moreover, although the applicant states that his father applied for a visa at the same time, and his father's visa was granted, there is no evidence to support this in the record. As the burden is on the applicant to establish that he or she is not inadmissible, the applicant has the burden of showing that any misrepresentation was, in fact, not willful. *See* section 291 of the Act, 8 U.S.C. § 1361. We conclude that the applicant misrepresented that he was married in an attempt to obtain a benefit under the Act.

With respect to materiality, in *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

> A misrepresentation . . . 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 a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States,* 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

To establish eligibility for a non-immigrant B1/B2 visa, section 101(a)(15) of the Act states, in pertinent part:

> (B) an alien…having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

The Foreign Affairs Manual, at 9 FAM 41.31 N3.4, further provides:

> The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.

By submitting a Form OF-156 indicating that he was married in his application for a B1/B2 visa, the applicant led the U.S. Consular Section in Cairo to believe that he had a close family tie, namely, a wife, in his home country. By omitting the fact that he was not married, he cut off a line of inquiry which was relevant to the applicant's request for a nonimmigrant visa.

As such, we concur with the field office director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for a willful and material misrepresentation with respect to his nonimmigrant visa application in 1999.

Section 291 of the Act, 8 U.S.C. § 1361, states that whenever any person makes an application for admission, the burden of proof shall be upon such person to establish that he is not inadmissible under any provision of this Act. The burden never shifts to the government to prove admissibility during the adjudication of a benefit application, including an application for a waiver. INA § 291; *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1976). The applicant has not met his burden.

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 …

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. 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 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 v. I.N.S.*, 138 F.3d 1292, 1293 (9th Cir. 1993), (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.

As noted above, the District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative if the waiver application was denied. On appeal, counsel presents no new assertions or evidence to establish extreme hardship to the applicant's spouse.

The applicant submitted the Form I-601 on February 22, 2013. The documentation that the applicant submitted with the application to show extreme hardship to a qualifying relative consisted of a copy of a statement from his spouse dated August 18, 2011, and evidence related to his spouse's struggles with drug addiction, including an order for release on parole dated June 28, 2011, a psych social work discharge plan dated August 15, 2011, a discharge medication reconciliation form dated August 15, 2011, and pages from a Narcotics Anonymous meeting logbook for August 2011.

On July 29, 2013, the District Director issued a Notice of Intent to Deny (NOID) the Form I-601, noting that the application failed to include an explanation of the hardship to the applicant's spouse if the applicant is removed from the United States, requiring USCIS to analyze the evidence

presented without a statement from the applicant to put the evidence in context. The Director also noted that the statement from the applicant's spouse was a copy of a statement previously provided to the record in a previous proceeding.

The applicant's spouse states that the applicant supports her financially; however, there is no evidence regarding the financial support that the applicant provides to his spouse. The applicant's spouse further states that she suffers from medical problems and that the applicant assisted her with paying her medical bills. However, there is no evidence in the record regarding the medical problems of the applicant's spouse, other than her problems with illegal drugs, and no evidence to establish that the applicant has provided assistance in paying her medical bills.

The District Director stated in the NOID that while the evidence in the record shows that the applicant's wife is addicted to drugs and has a criminal history, the record fails to show the applicant's role in her treatment or recovery, in order to establish that the qualifying relative would experience extreme hardship if the waiver application is not approved.

In response to the NOID, the applicant submitted a statement dated August 13, 2013. The applicant asserts that it is unreasonable to conclude that he doesn't support his spouse emotionally and financially. However, the applicant submits no evidence to support this assertion.

In addition, as noted by the District Director, the applicant's spouse was released on parole, and the parole document signed by the commissioner of the Maryland Parole Commission on June 28, 2011 shows that the applicant's spouse's "home plan" upon release was to live with a friend, and not the applicant, at an address different than the address where the applicant was residing.

The record fails to establish that the applicant's spouse will endure hardship as a result of separation from the applicant. Her situation, if she remains in the United States, does not rise to the level of extreme hardship based on the record.

With respect to relocation, the applicant's spouse was born in the United States, and is unfamiliar with the language and customs of Egypt. The applicant's spouse, in her statement of August 18, 2011, states that her mother and grandmother reside in the United States, indicating strong family ties in the United States. The applicant's spouse states that she fears relocation due to the political and civil problems and anti-American attitudes in Egypt and being a white Christian woman in Egypt. In addition, the record establishes that the applicant's spouse has a drug problem, and includes country-conditions information regarding the difficulty of obtaining drug rehabilitation in Egypt.

Based on the evidence in the record, the applicant has established that his spouse would suffer hardships that, when considered in the aggregate, are beyond the common results of removal if she were to relocate to Egypt to reside with the applicant.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship

warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. 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 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. 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.