

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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



U.S. Citizenship
and Immigration
Services

[REDACTED]

435

FILE:

[REDACTED]

Office: BUFFALO, NY

Date: DEC 06 2010

IN RE:

[REDACTED]

APPLICATION: Immigrant Application for Waiver of Grounds of Inadmissibility pursuant to 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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Buffalo, New York and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Yemen 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 having attempted to obtain a benefit under the Act by fraud and willful misrepresentation.¹ The applicant is the son of a U.S. citizen father and stepmother. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The District Director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to his U.S. citizen father or stepmother. She denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 5, 2007.

On appeal, counsel for the applicant contends that the District Director's decision is not supported by the record or proper reasoning. Counsel asserts that the District Director's finding that the applicant is inadmissible to the United States is inconsistent with the record and immigration law and, alternately, that the applicant is eligible for a waiver of inadmissibility under section 212(i) of the Act. *Form I-290B, Notice of Appeal or Motion*, dated December 1, 2007.

The record includes, but is not limited to, counsel's briefs; statements from the applicant's father, his stepmother, his uncle and his cousin; documentation concerning the applicant's father's business and real estate holdings; tax returns and financial documentation relating to the applicant's father; and a copy of the Nonimmigrant Visa (NIV) Application submitted by the applicant to the U.S. embassy in Bangui, Central African Republic (CAR) to obtain a nonimmigrant visa. The entire record was reviewed and all relevant evidence considered in reaching a decision on the applicant's appeal.

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

- (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 record contains a copy of the applicant's NIV application submitted to the U.S. embassy in Bangui, CAR in August 2001. The responses to Question 31, which asks an NIV applicant if he or she has ever been the beneficiary of an immigrant visa petition, and to Question 32, which asks

¹ The AAO notes that the District Director's decision does not distinguish between fraud and willful misrepresentation in finding the applicant to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. Counsel correctly observes that a higher evidentiary standard is required for a finding of fraud and the AAO also agrees that the District Director's decision does not support such a finding. Accordingly, the District Director erred in concluding that the applicant had engaged in fraud as well as the willful misrepresentation of a material fact.

whether the applicant has any relatives in the United States, are in the negative. However, at the time the applicant submitted the NIV application, the record indicates that he was the beneficiary of two pending Form I-130s, Petitions for Alien Relative, filed by his then lawful permanent resident father and his U.S. citizen stepmother, and that he had been the beneficiary of a Form I-130 filed by his stepmother in 1998, which was subsequently withdrawn. The record also indicates that the applicant's father and stepmother were residing in the United States at the time he submitted his NIV application.

The AAO also notes that in response to Question 33, which asks an NIV applicant to identify the countries in which he or she has resided for more than six months during the preceding five years, only "Bangui" is listed. We further observe that a handwritten note on the applicant's NIV application indicates that at the time of his interview, the consular officer was informed that the applicant had grown up in Bangui. Both claims, however, are refuted by the applicant's Form G-325A, Biographic Information, dated January 3, 2002, which reports that the applicant grew up and resided in Yemen until he moved to CAR in April 2001, less than four months prior to seeking a nonimmigrant visa to the United States.

On appeal, counsel asserts that the District Director erred in issuing her decision without interviewing the applicant "even once" and that her failure to interview the applicant and to allow him to present witnesses violated the applicant's due process rights under the 5th Amendment. In *De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004), the 5th Circuit Court of Appeals held that an alien "must make an initial showing of substantial prejudice" to prevail on a due process challenge. In the present case, a review of the record does not find it to demonstrate that not being interviewed resulted in substantial prejudice to the applicant. Further, as subsequently discussed, the applicant has submitted no evidence on appeal that establishes the District Director's denial was not the proper result under the Act. Regardless, constitutional issues are not within the appellate jurisdiction of the AAO. Therefore, this assertion will not be addressed further.

Counsel also contends that the misrepresentations included in the applicant's NIV application are neither willful nor material and that, as a result, the applicant is not subject to section 212(a)(6)(C)(i) of the Act. Counsel asserts that the applicant relied upon an interpreter to fill out the NIV application, as well as assist him during his NIV interview. It is the interpreter, counsel claims, who failed to provide the correct answers on the applicant's NIV application, even though he was informed by the applicant that he was seeking a visa to visit his family in the United States, that his stepmother had previously filed a Form I-130 on his behalf and that he was the beneficiary of two pending Form I-130s. Counsel also reports that the applicant believes he was asked only two questions by the consular officer during his NIV interview, "Where do you want to go?" and "Where will you stay?" and that the applicant, through his interpreter, replied truthfully that he intended to visit his father and family in the United States.

In considering whether the misrepresentations on the applicant's NIV application bar his admission to the United States pursuant to section 212(a)(6)(C)(i) of the Act, the AAO will first consider whether they are material misrepresentations for immigration purposes.

The Supreme Court in *Kungys v. United States*, 485 U.S. 759 (1988) found that the test of whether concealments or misrepresentations were "material" was whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect USCIS decisions. In addition, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements of a material misrepresentation are as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

- a. the alien is excludable on the true facts, or
- b. 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.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (AG 1961).

In the present case, the AAO concludes that the negative responses to Questions 31 and 32 on the applicant's NIV application, the listing of Bangui in answer to Question 33 and the oral testimony that the applicant had grown up in Bangui combined to shut off a line of inquiry that would likely have resulted in the denial of his application under section 214(b) of the Act, which requires a consular officer to presume that a NIV applicant is an intending immigrant unless that applicant establishes that he or she is entitled to NIV admission. The AAO finds it improbable that knowing of the presence of the applicant's father and stepmother in the United States, the pending Form I-130s benefitting him, and his limited ties to CAR, a consular officer would have granted the applicant an NIV. Accordingly, the AAO concludes that the misrepresentations included in the applicant's application and made at the time of his interview were material misrepresentations.

Counsel, however, contends that the misrepresentations in the applicant's NIV application should not be viewed as material pursuant to 9 FAM 40.63 N 6.3-1, which states in pertinent part:

(2) If the truth of the fact being misrepresented is available to you through the visa lookout system, or through reference to the post's own files, it cannot be said that the alien's misrepresentation tended to cut off a line of inquiry since the line of inquiry was readily available to you. While the availability of the true facts does not support the "materiality" of the misrepresentation under the "rule of probability" (part two of the Attorney General's definition), if those facts disclose an independent ground of ineligibility, then the misrepresentation is material under the first part of the Attorney General's definition. (See 9 FAM 40.63 N6.1.)

Counsel asserts that information regarding the Form I-130 filed by the applicant's stepmother in 1998 and the presence of his father in the United States was available to the consular officer through the Visa Lookout System and notes that the copy of the applicant's NIV application included in the record indicates that the Visa Lookout System was checked prior to the issuance of the applicant's visa. Therefore, counsel claims, the negative responses on the applicant's NIV application to the

questions concerning previously filed immigrant visa petitions and family members in the United States did not tend to shut off a line of inquiry that was relevant to the applicant's visa eligibility and may not be considered material misrepresentations under the Act.

The AAO acknowledges that the applicant's NIV application indicates that a consular officer performed a check of the Visa Lookout System prior to issuing his visa, but does not find that such a check would have revealed the approved 1998 Form I-130 benefitting the applicant or the presence of his father in the United States. A check of the Visa Lookout System consists of a check of the Consular Lookout and Support System (CLASS), an automated database consisting of the names of several million individuals who have been refused a visa or passport, who require a Department of State opinion prior to the issuance of a visa or who are ineligible for a visa should they apply. The review of additional records may be required on the basis of information provided by a CLASS check. The AAO is unaware and it has not been demonstrated that the names of individuals who, like the applicant, are the beneficiaries of approved or pending immigrant visa petitions but whose visa applications have not yet been adjudicated by a consular officer would have appeared in CLASS, except as noted above. Accordingly, we find that the misrepresentations included in the NIV application are not subject to 9 FAM 40.63 N6.3-1 as it has not been shown that the correct information concerning the applicant's history would have been available through the Visa Lookout System at the time of his interview.

Moreover, the material misrepresentations made in support of the applicant's NIV application are not limited to whether he had family in the United States or was or had been the beneficiary of a Form I-130, but include a claim that he had resided in Bangui, CAR for more than six months at the time he submitted his NIV application and that he had grown up in Bangui, representations that sought to establish his ties to CAR. The AAO notes that, even if 9 FAM 40.63 N6.3-1 were found to apply in this matter, it would not cover the misrepresentations concerning the length of the applicant's residence in CAR.

In that the misrepresentations in the applicant's NIV application and those made at the time of his interview have been found to be material misrepresentations, the AAO now turns to whether they were also willful.

As previously noted, counsel contends that the misrepresentations made in the NIV application and at the time of the applicant's interview were the fault of the applicant's interpreter not the applicant. Although the AAO acknowledges counsel's assertions, there is no evidence in the record that supports his claims, e.g., a statement from [REDACTED] the individual who, counsel contends, filled out the applicant's NIV application and provided translation services for the applicant at his August 2001 NIV interview. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Instead, the record contains a copy of the applicant's NIV application reflecting material misrepresentations that served to establish his eligibility for a nonimmigrant visa. This application was signed by the applicant who, in signing it, certified the information provided was true and

correct to “the best of [his] knowledge and belief.” With no objective evidence to rebut the application, the AAO finds the applicant to have willfully misrepresented material facts in seeking a nonimmigrant visa to the United States and to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

- (1) 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 would impose 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 or his U.S. citizen and lawful permanent resident siblings can be considered only insofar as it results in hardship to a qualifying relative. The applicant’s father and stepmother are the qualifying relatives in this case.² If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant’s inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation

² The record indicates that the applicant married a U.S. citizen in 2004. Although no documentary evidence has been submitted to establish that the marriage has been terminated, counsel, on January 24, 2005, wrote to the Buffalo District Office stating that the applicant’s spouse had left him and that he wished to withdraw the Form I-485 based on the visa petition she had filed on his behalf. Accordingly, the applicant’s spouse will not be considered a qualifying relative for the purposes of this proceeding

when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals (BIA) stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 BIA 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 BIA 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 BIA has also held that the common or typical results of deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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 BIA 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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the BIA considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

The record contains a December 31, 2007 letter written by the applicant's father who states that the applicant was hospitalized in February 2004 for four days with heart pain and palpitations, and that he is still under constant medical supervision and treatment. Should the applicant be returned to Yemen, his father states, he would have to return with him as the applicant could not live alone. The applicant's father also asserts that if he relocates to Yemen, he would be unable to pay his debts, including a \$214,000 mortgage and \$100,000 in other loans. He reports that his children from a previous marriage have all immigrated to the United States and are attending school, and contends that it would be traumatic for them to be uprooted once again.

In an earlier statement, dated October 16, 2002, the applicant's father indicated that if the applicant were removed and the family relocated to Yemen, his three U.S. citizen children who had never been to Yemen would be deprived of the education and other opportunities available to them in the United States. He further claimed that relocation would result in great sorrow for him and his wife as they would have to raise their children apart from his wife's home and family. In his statement, the applicant's father also contended that the economic and political turmoil in Yemen and CAR, where the applicant last resided, had resulted in high crime rates, violence, terrorism, drug trafficking and organized crime, and that rearing his children under such conditions would be emotionally traumatic for him. The applicant's father also stated that if he left the United States, he would have to leave behind a flourishing business, including two grocery stores, six rental apartments and four properties.

The applicant's stepmother, in her own December 31, 2007 letter, states that she is unwilling to relocate to Yemen and thereby deprive her children of the love and company of their grandmother, aunts, uncles and cousins. She asserts that she has lived in the United States since she was two-years-old and would find it impossible to live in the Yemeni culture. The applicant's stepmother also contends that Female Genital Mutilation is practiced in Yemen and that she will not take her U.S. citizen daughter there.

Although the AAO notes the applicant's father's claims concerning the applicant's health, the record does not include any documentary evidence that demonstrates the applicant suffers from cardiac problems or any other medical condition. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Neither does it provide sufficient evidence to establish that the applicant's father's business could not be operated by his employees or that his rental apartments and properties could not be managed from outside the United States. The AAO does, however, take note of the applicant's father's concerns regarding conditions in Yemen and CAR, and their effect on him and his family should they relocate to either country with the applicant. The Department of State updated its travel warning for Yemen on October 15, 2010, strongly advising U.S. citizens against any nonessential travel in light of the high security threat level resulting from terrorist activities. The Department of State has also updated its warning for CAR as of February 26, 2010, based on the risks of travel within the country and recommends against all but essential travel outside Bangui. The warning also advises that Bangui suffers from elevated crime rates, as well as particularly

limited transport and medical options. It reports that CAR military and civilian security forces, as well as those posing as members of these forces, frequently harass local and expatriate travelers by seeking bribes at checkpoints located throughout the city.

The AAO concludes that when the security risks of residing in Yemen or CAR and the normal disruptions and difficulties that accompany the overseas relocation of a family are considered in the aggregate, the applicant has established that his father and stepmother would experience extreme hardship if they relocate with him. We do not, however, find that he has similarly demonstrated that extreme hardship would result if they remain in the United States without him.

Neither the applicant nor counsel address what hardships might affect the applicant's father if the applicant is removed and he, despite his stated intentions, remains in the United States. The AAO notes that the applicant's father claims that his son is suffering from a cardiac or cardiac-related condition and acknowledges that the applicant's health could potentially serve as a cause of concern for his father if they were separated. However, as previously discussed, the record does not document that the applicant suffers from any medical condition that would be a cause of concern for his father. Accordingly, the AAO finds that the record fails to demonstrate that the applicant's father would experience extreme hardship if the applicant is removed and he remains in the United States.

In her December 31, 2007 letter, the applicant's stepmother asserts that the applicant's removal would result in her separation from her husband as he would relocate to Yemen with the applicant who has health problems. She contends that it would be impossible for her to survive in the United States without her husband's income as he is the only wage earner in the family. She states that she would be unable to provide food, education or basic necessities for her children and, further, that she would have no place to live as she would be unable to afford their home, which has a mortgage of \$220,000. The applicant's father raises these same hardships in his December 31, 2007 letter, contending that his wife and children would have no option but to go on welfare in his absence as he would be unable to provide for them from Yemen.

As previously discussed, however, the record does not establish that the applicant suffers from any medical condition that would require his father to return with him to Yemen. It further offers insufficient information regarding the applicant's father's business to demonstrate that his employees would be unable to continue his current business operations or that he could not oversee his rental properties and real estate from outside the United States, thereby providing his family with continued income. Moreover, the AAO notes that the record indicates that five of the applicant's lawful permanent resident siblings, all of whom arrived in the United States in 2005, are adults and no evidence establishes that they would be unable or unwilling to assist in the operation of the family's business interests in their father's absence or to help their stepmother as necessary. Accordingly, the record does not demonstrate that the applicant's stepmother would experience extreme hardship if the applicant is removed and she remains in the United States.

As the record has failed to establish that the applicant's father and/or stepmother would experience extreme hardship whether they relocate with him or remain in the United States without him, the

applicant is not eligible for a waiver under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.