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

DATE: **APR 22 2013** Office: SAN FRANCISCO FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Section 212(i) of the Immigration and Nationality Act, 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Kazakhstan 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 procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to her qualifying spouse and denied the application accordingly. *See Decision of Field Office Director*, dated July 23, 2012.

On appeal, counsel for the applicant asserts that the applicant did not intend to obtain her visa through fraud. Counsel explains that the applicant presented truthful information in her visa application but that the purpose of her trip to the United States was never fulfilled due to the decisions and misstatements of others. Additionally, counsel states that the qualifying spouse would experience extreme hardship if he were forced to relocate to Kazakhstan to join the applicant. Counsel contends that the qualifying spouse suffers from health conditions for which he would be unable to obtain necessary treatment in Kazakhstan. Counsel also states that the qualifying spouse would lose his business if he were to relocate and would be unable to earn a living in Kazakhstan. *Counsel's Brief*.

The record includes, but is not limited to: two psychological evaluations regarding the qualifying spouse; copies of the qualifying spouse's prescriptions; country conditions information; a letter from the qualifying spouse's mother's doctor; medical records relating to the qualifying spouse; and financial records. The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant contests the finding of inadmissibility on appeal. Pursuant to section 291 of the Act, she bears the burden of demonstrating by a preponderance of the evidence that she is not inadmissible. *See also Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978). Where the evidence for and against admissibility "is of equal probative weight," the applicant cannot meet her burden of proof. *Matter of Rivero-Diaz*, 12 I&N Dec. 475, 476 (BIA 1967) (citing *Matter of M--*, 3 I&N Dec. 777, 781 (BIA 1949)).

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.

In the present case, the record reflects that on July 30, 2004, the applicant received an I visa on the basis that she would be traveling to the United States as a journalist. An overseas investigation later revealed that the applicant never resided at the address listed on her visa application and that the employer she claimed to work for did not exist. The applicant traveled to the United States with the I visa, did not work as a journalist, and has remained in the country ever since.

On appeal, the applicant claims that she did not intentionally misrepresent any information on her visa application. She alleges that in June 2004, she met with a representative at an agency, who told her that she could participate in making a film about teaching practices in California. She was not a journalist, but was told that she was qualified to participate in the project due to her degree in education and her teaching experience. The representative told her that a journalist and a cameraman would accompany her on the trip. She states that the agency provided her with the paperwork to present at her visa interview. After receiving her visa, she traveled alone to the United States, expecting to meet with the journalist and cameraman after her arrival. However, the agent representative eventually informed her that the project had been canceled. The applicant did not depart the United States at that time because she wanted to travel around the country. She eventually met and married the qualifying spouse and has continued to reside in the United States.

The AAO finds that the applicant has failed to demonstrate that she is not inadmissible. The applicant has not explained why she listed a false address and a nonexistent employer on her visa application. The applicant attended an interview at which she presented her visa application containing the false information and there is no indication that anyone else was responsible for presenting that information to the consular officer. Therefore, the AAO finds that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for procuring admission to the United States through fraud or misrepresentation. She is eligible to apply for a waiver under section 212(i) of the Act as the spouse of a U.S. citizen.

Section 212(i) of the Act provides:

- (1) 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.

Pursuant to section 212(i) of the Act, a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant herself can only be considered insofar as it causes extreme hardship to her qualifying spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 of Immigration Appeals (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 U.S. 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. 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 qualifying spouse states that he suffers from high blood pressure and that many of his male family members, including his father and four of his uncles, died from a stroke caused by high blood pressure between the ages of 36 and 52. The qualifying spouse lives in “constant fear of dying at a young age” and he relies on the support of the applicant to manage his health and decrease his worry. He asserts that the applicant cooks healthy meals for him, reminds him to take his medication, and motivates him to exercise and to attend doctor’s appointments. He states that she also provides him with emotional support, helping him to “feel optimistic and less scared for [his] life.” He asserts that he is very close to the applicant and that he would not be able to live without her.

The qualifying spouse fears that he would be unable to obtain necessary medical care in Kazakhstan. He also alleges that the hot climate in Kazakhstan would have a negative effect on his high blood pressure and that he would be at risk of a stroke every summer. He also states that Kazakhstan is polluted with radioactive and toxic chemicals which would be hazardous to his health.

He also states that he would not be able to live and work legally in Kazakhstan. He explains that he is originally from Uzbekistan and that he would not be eligible to apply for citizenship in Kazakhstan until he had been married to the applicant for three years. Additionally, he asserts that in order to become a citizen of Kazakhstan, he would be forced to renounce his U.S. citizenship. He fears that he would be unable to find work in Kazakhstan due to his status as a foreign citizen and his inability to speak Kazakh. Additionally, he contends that even if he did find a job, his salary would be insufficient to meet basic living expenses.

The record contains two psychological evaluations regarding the qualifying spouse. The first evaluation, which is not dated, indicates that the qualifying spouse attended weekly therapy

sessions from August 2010 to January 2011. The evaluation notes that the qualifying spouse reports “a very strong bond” with the applicant and that he cannot imagine his life without her. *See Psychological Evaluation,* [REDACTED] Additionally, the evaluation indicates that the qualifying spouse is “suffering from anxiety and panic attack, and only his wife, as [a] safe person, can help him calm down.” *Id.* The evaluation goes on to state that the qualifying spouse has a “self-reported tendency toward experiencing depressed mood” and that “[t]reatment was recommended to help deal [sic] with current upsetting situation with his wife[’s] legal problem, and achievement problems.” *Id.* The evaluation therefore diagnoses the qualifying spouse with “Chronic Major Depression Disorder (recurrent, without psychotic features). Generalized Anxiety Disorder. Obsessive-Compulsive Disorder.” *Id.*

The second evaluation, which is also undated and is unsigned, states that the qualifying spouse attended appointments with a psychiatrist beginning on February 28, 2011 for “severe anxiety with attacks of panic and feelings of hopelessness and helplessness when he found out that his wife may have to return to her native country” *See Psychiatric Report,* [REDACTED] [REDACTED] The evaluation indicates that the qualifying spouse feels frightened and lonely at the thought of living without the applicant and that the stress of her immigration situation “destroys his ability to think clearly and quietly and to deal with any challenges of daily life.” *Id.* The evaluation further notes that the qualifying spouse had already been under stress because his mother had experienced a serious illness and the applicant had been treated for cancer, so the potential deportation of the applicant was “the last straw.” *Id.* As a result, according to the evaluation, the qualifying spouse “became very distracted, absentminded, lost his job, and now he spends most of his time at home sitting and staring at the wall or the television screen, as he describes it, to numb his thoughts and fears.” *Id.* Additionally, the qualifying spouse’s blood pressure increased and did not improve until he began taking two medications, both of which have negative side effects which make him feel “that his life and health is completely ruined.” *Id.* The evaluation indicates that the qualifying spouse’s symptoms of depression and anxiety have continued despite therapy and medication and that if the applicant is removed, the qualifying spouse’s “condition will definitely deteriorate and . . . [could result in] an even worse feeling of despair and potentially self-harming or suicidal thoughts potentially leading to psychiatric hospitalizations and major potentially lifelong disability.” *Id.*

The AAO finds that the qualifying spouse would suffer extreme hardship if he were to relocate to Kazakhstan. The qualifying spouse is originally from Uzbekistan and does not speak Kazakh. He has no ties to Kazakhstan other than the applicant and does not have citizenship or residency in that country. Additionally, the qualifying spouse owns and operates a business in the United States, through which he has gained financial stability. Medical records also confirm that he receives regular treatment for hypertension. He may be unable to receive necessary treatment in Kazakhstan, where “[m]edical care . . . is limited and well below North American and West European standards.” *See U.S. Department of State, Country Specific Information: Kazakhstan,* dated February 11, 2013.

The record also reflects that the qualifying spouse's mother recently relocated to the United States pursuant to a Petition for Alien Relative the qualifying spouse had filed on her behalf, and that he is responsible for caring for her. A letter from the qualifying spouse's mother's doctor states that she had a stroke in April 2011 and that she "has right sided weakness as well as hypertension, diabetes (insulin dependent), blindness in her right eye, deafness in her right ear, and right lower extremity hyperesthesia, speech and gait difficulty." See Letter from [REDACTED] dated February 23, 2012. Records indicate that the qualifying spouse has applied for formal recognition as his mother's caretaker and there is no evidence that anyone else is available to care for her. In the aggregate, the qualifying spouse's lack of ties in and unfamiliarity with Kazakhstan, his family and business responsibilities in the United States, and his health would create extreme hardship for him if he were to relocate to Kazakhstan.

However, the applicant has failed to demonstrate that her qualifying spouse would suffer extreme hardship upon separation from the applicant. While [REDACTED] asserts that the qualifying spouse has suffered severe depression and anxiety which have had a very negative impact on his daily life, [REDACTED] evaluation is undated and unsigned. Therefore, the qualifying spouse's current condition is not clear from the record. Additionally, although [REDACTED] writes that the qualifying spouse lost his job due to his poor mental health and that he "spends most of his time at home sitting and staring at the wall or the television screen," the rest of the record does not support such a claim. The qualifying spouse himself does not assert that he lost his job or that he cannot engage in regular daily activities; to the contrary, he states that he has been successfully expanding his business and has built "a reliable reputation among [his] clients." The record also indicates that the qualifying spouse provides significant care for his mother. Although the qualifying spouse states that the applicant helps him maintain a healthy lifestyle, the evidence is insufficient to show that he cannot do so without her assistance. Furthermore, while the psychological evaluation from [REDACTED] states that the qualifying spouse reports feelings of depression and anxiety, it does not indicate that those conditions have interfered with his ability to work, to care for himself or his mother, or to complete daily tasks. [REDACTED] evaluation is also undated, so it does not establish the qualifying spouse's current condition. While the AAO recognizes that the qualifying spouse has been concerned about the applicant's potential removal to Kazakhstan, the record does not demonstrate that his emotional hardship would rise above that which normally results from long-term separation from a close family member. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 567-68 (BIA 1999).

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). The AAO

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therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse 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 proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.