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U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: FEB 20 2013 Office: LONDON, UNITED KINGDOM [Redacted]

IN RE: [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 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Scotland, United Kingdom who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act(the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation.

The applicant is the beneficiary of an approved Petition for Alien Fiancé(e) (Form I-129F), and seeks a waiver of inadmissibility pursuant to section 212(i) in order to reside in the United States with his United States citizen fiancé.

The District Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of District Director* dated February 29, 2012.

On appeal, applicant asserts that his fiancé would suffer extreme hardship if the applicant were not granted a waiver of inadmissibility.

The record contains but is not limited to, counsel's brief, statements from the applicant and applicant's fiancé, letters from other interested parties, financial and medical records, as well as various immigration applications and decisions. 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.

In the present case, the government records reflect that the applicant attempted to enter the United States on April 17, 2010 under the Visa Waiver Program at the port of entry. The applicant was asked several questions during inspection and later admitted in a sworn statement that he misrepresented material facts about the nature of several of his previous trips to the United States for the purpose of gaining admission. The applicant was found inadmissible to the United States pursuant to sections 212(a)(7)(A)(i)(I), 8 U.S.C. §1182(a)(7)(A)(i)(I) as an intending immigrant who is not in possession of a valid entry document, and 212(a)(6)(C)(i) the Act for misrepresentation of a material fact in order to gain an immigration benefit, and was refused admission on the same date. On May 2, 2011 the applicant signed a Nonimmigrant Visa Application (Form DS-156) indicating on the form that he had never been refused admission to the United States; or been the subject of a deportation hearing; or sought to obtain or assist others to obtain a visa, entry into the United States, or any other immigration

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benefit thru fraud or willful misrepresentation or other unlawful means. Based upon the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. §1182(a)(6)(C)(i). The applicant challenges his inadmissibility indicating that it was not his intent to misrepresent his purpose in entering the United States during prior admissions. However, the applicant has failed to reasonably explain why he answered “no” to the question on the Form DS-156, which asked if he had ever been refused admission to the U.S, although clearly aware that he had in fact been refused admission on April 17, 2010. According to the sworn statement by the applicant taken on April 17, 2010, preceding this refusal, it was verified that during several earlier entries, and in particular a March 9, 2007 secondary inspection, he offered a number of inconsistent explanations for his need to enter the United States, when questioned about his purpose for entry. Most notably according to his sworn statement, he indicated on a prior occasion of entry that his sister was dying of cancer, but later indicated that it was actually his girlfriend’s mother who died from cancer. The applicant also indicated in his sworn statement that he was aware of making the inconsistent statements during those entries. The record therefore supports this finding, and the AAO concurs in the applicant’s inadmissibility under 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides, in pertinent part:

- (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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a demonstration that barring admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully permanent resident spouse or parent of the applicant. Hardship to the applicant and her children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant’s spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver and the 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

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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*, 138 F.3d at 1293 (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.

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The applicant's fiancé indicates that the applicant is her source of emotional support. The applicant's fiancé also states that she relies on the applicant for supplementary financial assistance and it would be difficult to maintain her current lifestyle without this support. The applicant's fiancé further states that she cannot relocate with the applicant because she has numerous family obligations including, helping her mentally ill son cope with his emotional, physical and financial issues, assisting her older sibling with executor responsibilities for their mother's estate due to his health problems and, handling the estate of her younger sibling. The applicant's fiancé indicated that her son's father is unable to assist her with his care because he too has many serious health concerns which have caused his own financial instability and the loss of his home. The applicant's fiancé also stated that she would be unable to live in Scotland because it would be difficult to begin another business such as the one she currently owns, and could not sell her home which she has owned for eight years, in its current mortgaged/unfinished condition. The applicant's fiancé further states that she is unsure if she would be able to obtain medical insurance in that country in the same way she is able to receive coverage in the United States.

The applicant's fiancé also indicates that she would suffer hardship if she were separated from the applicant because she depends on the applicant for emotional and financial support. The applicant's fiancé states that the applicant has helped to finance the renovations on her home as well as the expenses of her family home, and without him she would be unable to continue in these endeavors while also handling the needs of her business enterprise. The applicant's fiancé further indicates that the stress from the applicant's inadmissibility has caused her to suffer from health issues such as anxiety, depression, hair loss and rashes. The applicant's fiancé indicates her doctor has prescribed an antidepressant and a steroid for her, and she also visited a psychiatrist who agreed with the physician's assessment regarding prescriptive treatment. The applicant's fiancé also stated that the psychiatrist has created a therapeutic treatment plan for her with sessions once per week for a six month period. The applicant submits a report from Dr. [REDACTED] dated March 12, 2012 in support of these statements, indicating the applicant's fiancé displayed normal behavior and affect during the examination but discussed itching in her head, hair loss, depression and anxiety due to the applicant's inadmissibility issues and her son's rehabilitation for drug usage.

In this case the applicant has provided sufficient evidence to demonstrate that his fiancé would suffer extreme hardship were she to relocate to Scotland in order to live with the applicant. The applicant's fiancé has a number of familial obligations which would be harmed if she left the United States for an extended period of time, causing her to experience stress beyond that which would be commonly expected under such circumstances. Specifically, it has been established that the care of her only son who is currently undergoing several challenges is of great concern for the applicant's fiancé due to the inability of his father to offer substantive assistance. The distance from her son whom she currently cares for on a regular basis, while living in Scotland would be an extreme hardship. In addition, an extended departure from her solely owned long term small business enterprise as well as the home she purchased alone, would also be more than a normally expected challenge to withstand.

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However, the applicant has not demonstrated that his fiancé would suffer extreme hardship from separation. The applicant has submitted various documents indicating that his work as an engineer currently requires him to travel worldwide on a regular basis and he has continued to do so since their relationship began in 2003 and the engagement in 2007. The applicant has worked throughout his career for extended periods in countries such as Singapore, Brazil and Malaysia and according to the statements submitted, his fiancé was able to meet him during some of these trips in addition to maintaining contact through the computer and telephone calls. There is no evidence to indicate that were he to reside in the United States at this time, his work would not continue to be directed in this way, based on his particular area of concentration. There is also insufficient evidence provided in the record to demonstrate that during these separations over the years his fiancé has suffered any particular extreme hardship due to their extended parting, or that the relationship with his fiancé would not also continue to progress in the same way based on its history. It is noted that the applicant's fiancé indicates she is experiencing depression, rashes, weight gain and general anxiety over the applicant's inadmissibility to the United States, and that she has visited her primary care doctor who prescribed medication for her anxiety, as well as a psychiatrist who agreed with the primary care doctor on his prescription treatment, but also felt she should undergo therapy, and established a once per week regimen for the next six months. However, the medical report provided as evidence of these statements provides very little information regarding the findings. In the report from Dr. [REDACTED] the limited information lists depression/anxiety with allergic dermatitis, and hypothyroidism in the assessment, but offers no further details about these conditions. And although the applicant's spouse indicated she visited a psychiatrist who subsequently ordered ongoing therapy, for her, there were no documents offered regarding this treatment. Consequently, the extent of psychological and emotional harm based on separation cannot be determined based on the evidence submitted for review.

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 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(s) in this case.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 his United States 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 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.