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

U.S. Citizenship and Immigration Services

(b)(6)

Date: DEC 15 2014 Office: NEW YORK 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, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Paraguay 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 procuring admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States.

The district director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Director* dated June 23, 2014.

On appeal counsel for the applicant states that the director's decision did not give proper weight to the hardship issues pertaining to the applicant's spouse and asserts that the facts rise to the level of extreme hardship. With the appeal counsel submits a brief, a mental health assessment of the applicant's spouse, a statement from the applicant's spouse, and a letter confirming the applicant's employment. The record contains previously-submitted statements from the applicant and his spouse along with financial documentation and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant entered the United States on April 22, 2007, after having obtained a B-2 visitor visa by claiming that he was married with three children at that time when in fact he was single and had no children. Based on this information the director determined that the

applicant was inadmissible for willful misrepresentation of a material fact. The applicant has not contested the director's finding of inadmissibility.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's spouse is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be "qualifying relatives." However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the

combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g.*, *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

On appeal counsel asserts that a mental status examination shows the applicant's spouse is experiencing an anxious-depressive condition and that she is depressed over the fear of being separated from the applicant. The applicant's spouse states that their lives have blended due to a strong love and support of each other's interests and shared spiritual values, so she would suffer extreme emotional hardship if separated from the applicant. She describes the applicant as a caring stepfather to her son and states that she cannot imagine life without him. The spouse states that she is worried about the political situation in Paraguay, where drug cartels target people who have relatives in United States, so she would fear for applicant's life there and it would be stressful to visit him with her son because she would be worried about overall safety. She states that because of her anxiety she saw a mental health counselor who indicated she is clinically depressed.

A mental health assessment of the applicant's spouse diagnoses her with Developed Adjustment Disorder with Mixed Anxiety and Depressed Mood, states that she is extremely worried and apprehensive, and summarizes that clinical interviews and tests show she is experiencing an anxious-depressive condition triggered by the uncertainties of the applicant's immigration situation. The assessment states that the applicant and his spouse have strong ethno-cultural similarities as they had a similar upbringing in Paraguay, coming from homes of humble means with identical traditions and customs. According to the assessment, the spouse describes the applicant as a loving co-caretaker and a great father for her youngest son. The assessment notes the importance of a father to children and that not having a father can lead to mental health problems and it further notes the hardship to the applicant's spouse over the emotional wellbeing of her son in the absence of his stepfather. The assessment also states that it appears that the applicant's spouse was exposed to domestic abuse during her childhood, but provides no further detail and the spouse does not refer to domestic abuse in her statements.

Although we recognize that the applicant's spouse will endure hardship as a result of separation from the applicant, the spouse's statement and the mental health assessment provided are insufficient to establish that the emotional hardships the applicant's spouse would experience are beyond the hardships normally associated when a spouse is found to be inadmissible.

Counsel also indicates that the applicant provides financially for his spouse and the spouse states that as she is presently unemployed, the applicant is her sole support and she has no means of surviving without his income. A letter from the applicant's employer, submitted with the appeal, states that he has been employed since April 2012, but does not provide further information such as current salary or other benefits. Although the applicant's spouse states she is currently unemployed, there is no indication that she is unable to work. Further, no documentation has been submitted establishing the spouse's current expenses, liabilities, or her overall financial situation, or showing the applicant's contribution, to establish that without the applicant's physical presence in the United States his spouse will experience financial hardship. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

We find that the record fails to establish that the applicant's spouse will suffer extreme hardship as a consequence of being separated from the applicant. Her situation if she remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's spouse would face as a result of her separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

We also find the record fails to establish that the applicant's spouse would experience extreme hardship if she were to relocate to Paraguay, her native country, to reside with the applicant. Counsel asserts that the applicant's spouse no longer has roots in Paraguay as she is a long-time U.S. citizen. Counsel cites country information showing that Paraguay has many issues, including a high crime rate and serious unemployment, so life there would be physically and psychologically difficult for the applicant's spouse.

The mental health assessment states that the applicant's spouse cannot leave her children behind and that her youngest son needs medical treatment. Although the assessment indicates that the spouse's son has abnormal toe growth formations and has had some amputations, no documentation has been submitted to the record to support the assertion and neither counsel nor the applicant's spouse refer to any medical conditions related to the spouse's son. The assessment states that the applicant's spouse describes conditions in Paraguay as bad with no jobs and low salaries and that she would face poverty and crime plus age and gender discrimination. It further states that the spouse indicates that hospitals are not good and that schools are inefficient and poorly funded, so relocation would be traumatic for her and her youngest son.

The record contains no country condition evidence and fails to address where the applicant would live if he returned to Paraguay, and therefore fails to establish that safety and economic concerns

regarding relocating to Paraguay would rise to the level of extreme hardship for the applicant's spouse. We note that according to the U.S. Department of State, although there is no specific threat to U.S. citizens in Paraguay, travelers should remain vigilant at all times. It states that crime has increased steadily over the past several years although most crime is nonviolent. It further notes that adequate medical facilities, prescription and over-the-counter medications, supplies, and services are available in Asuncion, although limited elsewhere. *See* U.S. Department of State, Bureau of Consular Affairs, dated September 5, 2014.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the applicant has failed to establish extreme hardship to his 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 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.