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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: FEB 19 2014 OFFICE: MIAMI

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 Field Office Director, Miami, Florida, denied the waiver application, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision affirmed.

The applicant is a native and citizen of Argentina applying for adjustment of status under the Cuban Adjustment Act (CAA) 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 attempting to procure admission to the United States through fraud or the willful misrepresentation of a material fact. He seeks a waiver of inadmissibility in order to live in the United States with his lawful permanent resident spouse.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, March 15, 2013. On appeal, the AAO found the applicant had failed to show that failure to grant a waiver would impose extreme hardship on a qualifying relative. *Decision of the AAO,* August 29, 2013.

On motion, counsel provides new evidence consisting of economic forecasts of fiscal problems in Argentina and asserts these financial problems will impose extreme hardship on the applicant's spouse if the applicant is unable to remain here. In support of the motion, counsel offers a brief with news articles reporting growing inflation and predicting a possible recession. The record includes: hardship and supportive statements; an employment letter; psychological evaluations and medical letters; financial documentation, including tax returns, bills, and bank statements; birth, marriage, and divorce certificates; country condition information; and photographs. The entire record was reviewed and considered in rendering this decision.

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

> 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)(1) of the Act provides:

> 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 [...].

The record reflects that applicant overstayed his 1998 visa waiver admission, married a Cuban national who was a lawful permanent resident in 2007, and filed for adjustment of status under the

CAA. The record indicates that during the applicant's adjustment of status interview, his former spouse withdrew her petition and admitted in a sworn statement that the applicant paid her $10,000 to marry him and help him obtain permanent resident status. In denying the waiver application, the field office director found the applicant to have entered into a sham marriage to circumvent the immigration laws of the United States. The AAO concluded that by engaging in marriage fraud the applicant attempted to procure an immigration benefit by fraud or willful misrepresentation and is thus inadmissible under section 212(a)(6)(C) of the Act. The applicant does not contest the inadmissibility.

The record further shows that after being denied permanent residence based on the sham marriage to his first wife, the applicant divorced her in July 2010 and married his current wife, also a Cuban national and lawful permanent resident, on December 2, 2010. Based on this second marriage, he filed another application to adjust status under the CAA in April 2011, and concurrently filed an application for waiver of his inadmissibility for the marriage fraud committed in conjunction with his first attempt to adjust status. On appeal, the applicant does not contest the finding that he is inadmissible under section 212(a)(6)(C)(i) of the Act for having engaged in marriage fraud.

A waiver of inadmissibility under section 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant or the applicant's child can be considered only insofar as it results in hardship to a qualifying relative. In this case, the applicant's wife is the only qualifying relative. 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,* 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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).

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

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido v. I.N.S.*, 138 F.3d 1292 (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 applicant's wife is a 49 year-old native of Cuba who became a lawful permanent. resident in 2009. She states that the applicant is her soul mate and separating from him would be devastating, reports having major depression and anxiety that have worsened due to her husband's immigration situation, underwent a hysterectomy in 2009, and has a thyroid condition. Documentation shows that she takes medication for depression, anxiety, and hypothyroidism, and may be receiving hormone replacement therapy (HRT).[1] Psychological evaluations in 2012 and 2013 indicate that she is suffering from depression and anxiety and her symptoms include insomnia, inability to

[1] A psychologist indicates that hormonal imbalances stemming from the hysterectomy have caused mood swings and depression that could not be treated with HRT due to the qualifying relative's high risk of breast cancer. However, her doctor states that she is, in fact, taking HRT and that it is these hormones that cause the mood swings.

concentrate, crying spells, feelings of panic, mood swings, and weight fluctuations. The evaluations recommend that she receive psychotherapeutic treatment for her mental state, but there is no evidence she underwent this therapy.[2]

The applicant's wife states that the applicant is her main source of emotional support, as her mother and siblings do not live in the United States. The record shows she has an aunt, uncle and cousins living nearby in south Florida with whom she claims to have a close, supportive relationship. She also claims to have developed a bond with the applicant's daughter, who she reports sometimes stays weekends in the home she shares with the applicant. The record indicates that her stepdaughter's custodial parent is supportive of the qualifying relative's relationship with the applicant's daughter. There is no indication the applicant's wife would be unable to visit her husband overseas to ease the pain of separation.

Counsel states that in the past the applicant has been the primary source of household income, but that his wife now contributes to family earnings by virtue of her work as a realtor since 2012. The AAO noted in its prior dismissal decision that the applicant's spouse mentions in her May 2013 statement that making improvement in her work has given her hope, but her employer expressed concern that same month about a decline in her performance. Documentation shows the applicant's name on the deed to their condominium and that they share responsibility for various household expenses. While the psychologist states the applicant's wife graduated from college in Cuba, there is no evidence regarding her employment history or how she supported herself before marrying the applicant in December 2010.

The motion provides no new documentation regarding adverse financial impact of the applicant's departure on his wife, and the evidence on record does not demonstrate that without the applicant's contribution to household income, his wife's ability to meet her financial obligations would be impaired. The record shows she has no dependents and there is no evidence of her economic situation before 2010. The applicant makes the undocumented claim to be sending $300 each month to his mother in Argentina. While the AAO recognizes that household income may decline as a result of separation, the evidence fails to establish that the applicant's wife will be unable to meet her expenses in the applicant's absence.

For all these reasons, while the AAO recognizes that the applicant's absence will cause emotional hardship to his wife, there is insufficient evidence that the cumulative effect of the emotional and financial hardships to her due to her husband's inadmissibility would rise to the level of extreme. The qualifying relative's support network includes a number of relatives nearby, and the record indicates she maintains contact with her immediate family consisting of a sibling she visits in Europe and a parent and another sibling in Cuba. While we are sensitive that the applicant's absence will have some economic impact on his wife, he has not shown his departure will render her unable to meet her financial obligations. The AAO concludes based on the evidence provided

[2] The record contains a copy of an appointment card, but there is no further information concerning any therapy she may have received.

that, were his wife to remain in the United States without the applicant due to his inadmissibility, she would not suffer hardship beyond those problems normally associated with family separation.

Regarding his wife's claims of being unable to relocate to Argentina because she would lose her home, income, and supportive relationships, the applicant's evidence is similarly insufficient to alter our prior conclusions in dismissing the appeal. Documentation shows that the applicant purchased the couple's home in 2004, six years before marrying the qualifying relative; there is evidence that she has held her current job only since 2012, that she has a college art degree, and was born and raised in Cuba, where the native language is Spanish; and the record does not show that she lives with her relatives in Florida, that her stepdaughter lives with her, or that she would be unable either to maintain contact with them while abroad or to visit them in the United States. The AAO is sensitive that relocating would separate the applicant's wife from work, friends, and familiar surroundings. Despite providing information about the economic climate in Argentina, the applicant has failed to show that he or his wife would be unable to find employment in Argentina. Further, documentation shows that it is the applicant, not his wife, who owns U.S. real estate. Nor does the record show that she could not adapt to living in Argentina, where her native Spanish is spoken, as it reflects she lived in Europe between 1996 and 2005, including in Germany, before immigrating to the United States.

Regarding her mental and physical conditions, the applicant's wife offers anecdotal and web-based information that treatment of emotional illness is less accessible in Argentina and, for lack of government support, more expensive than in the United States. There is, however, no evidence of the actual cost of treatment, and little evidence of the prognosis for her conditions, with and without treatment. Specifically, the evidence fails to show she is currently receiving therapy, either medical or psychological, that would be unavailable in Argentina, the relative cost of such treatment, or that she could not afford it.

The AAO recognizes that relocating would entail the inconvenience of finding new healthcare providers to replace those left behind, but there is no indication the applicant's wife has a long-standing relationship with her U.S. caregivers. The record shows she has been a patient of her current physician only since June 2012 and demonstrates no ongoing relationship with the mental health provider that wrote either psychological evaluation or with any other therapist. As noted in the AAO's prior decision, while country condition reports indicate there are inadequate facilities and resources in "some" mental institutions, they do not indicate a scarcity of adequate mental health or medical resources in Argentina. Nor does the record reflect that her prescription medications are unavailable in Argentina.

Based on the cumulative weight of evidence regarding hardship due to relocation, the AAO does not find, under the totality of the circumstances, that the applicant's wife would suffer extreme hardship were she to relocate to Argentina to be with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater

hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although the AAO is not insensitive to the applicant's wife's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law. Having again found the applicant statutorily ineligible for relief under the Act, 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, 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 and, accordingly, the AAO's prior decision will be affirmed.

ORDER: The motion is granted. The prior decision of the AAO is affirmed.