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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: NOV 2 1 2014 OFFICE: NEW YORK FILE:

IN RE:

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 District Director, New York, New York denied the waiver application. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). This matter is now before the AAO on a motion. The motion will be granted and the prior decision of the AAO is affirmed.

The applicant is a native and citizen of Ecuador who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure entry to the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and stepchildren.

The District Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the District Director*, dated May 8, 2009. On appeal, the AAO also determined that the applicant failed to establish extreme hardship for a qualifying relative and dismissed the appeal accordingly. *See Decision of the AAO*, dated February 1, 2012.

In the applicant's motion, filed on February 28, 2012 and received by the AAO on September 22, 2014, the applicant submitted additional evidence to demonstrate that his qualifying relative would suffer extreme hardship upon denial of his waiver application. The applicant submitted background country conditions concerning Ecuador, an affidavit from the applicant, an affidavit from the applicant's spouse, letters of support from family members, medical documentation concerning the applicant and his spouse, and financial documentation. The entire record was reviewed and considered in rendering this decision.

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:

> (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 immigrant 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…

On March 5, 1993, the applicant attempted to enter the United States with an Ecuadorian passport belonging to another individual. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States through fraud or misrepresentation. The applicant does not dispute this ground of inadmissibility on motion.

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. Hardship to the applicant or his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. 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. *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.

The record reflects that the applicant is a 39-year-old native and citizen of Ecuador. The applicant's spouse is a 38-year-old native and citizen of the United States. The applicant is currently residing with his spouse and stepchildren in [redacted] New York.

The applicant's spouse asserts that the applicant is a wonderful husband and father, treating her three children as if they were his own. The applicant's spouse contends that she could not handle herself and her children without the applicant. It is noted that the applicant's spouse's three children range in age from eighteen to twelve. The record reflects that the applicant's spouse's children previously resided with the applicant's spouse's mother on weekdays. The applicant's spouse asserts that her children now reside with her, as she is not employed, though her mother continues to babysit the children when needed.

The applicant's spouse asserts that she is suffering from depression so that she relies upon the applicant to encourage her. The applicant's spouse previously submitted a psychological report on appeal, dated July 28, 2008, stating that the applicant's spouse would suffer major depressive disorder and her children would suffer from separation anxiety and depressive symptomatology upon separation from the applicant. The applicant's spouse's children submitted letters of support stating their sadness at the thought of the applicant's absence. It is noted that the applicant's stepchildren are not qualifying relatives in the context of this application so that any hardship they would experience will be considered only insofar as it affects the applicant's spouse. It is also noted that the record does not contain any updated psychological information since 2008. It was previously noted that the psychological report is based upon one meeting and contains no continuing treatment plan.

The applicant's spouse asserts that she is suffering from medical disorders causing a lack of energy and pain in her lower back. The applicant's spouse contends that her medical conditions render her unable to work in positions requiring heavy physical exertion. As such, the applicant's spouse asserts that she discontinued her position as a babysitter, as she was unable to change, comfort and care for her charges. The applicant's spouse asserts that she would be unable meet her expenses without the income of the applicant.

The record contains a letter from a physician stating that the applicant's spouse has suffered from secondary amenorrhea and thyroid problems for the past seven years, for which she takes medication. It is noted that the physician's letter does not address any symptoms that the applicant's spouse is experiencing or indicate that she is unable to maintain her employment. The applicant's spouse asserts that she shares an apartment with her sister, but that she has expenses such as food, clothes and other daily life necessities. As noted in the AAO's previous decision, the applicant failed to provide an accounting of monthly expenses and supporting documentation. It is also noted that the record contains tax records from 2009-2011 for the applicant and his spouse, identifying the applicant's spouse's employment as packing rather than babysitting. The record indicates that the applicant's spouse was previously self-employed in this position and there is no information concerning her ability to continue in this employment. The record is insufficient to determine the applicant's spouse's financial expenses and ability to maintain these obligations. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would suffer hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer extreme hardship upon separation from the applicant.

The applicant asserts that his spouse could not relocate to Ecuador to reside with him because neither she nor her children have ever visited the country. The applicant contends that he is from a poor area in Ecuador and that it would be very difficult to support his family members, including paying for medical care, upon relocation.

The applicant's spouse asserts that she and her children cannot relocate to Ecuador because they have never been there and they would face a difficult economic situation, as healthcare is difficult to access and expensive. It is noted that the applicant's spouse is a native of the United States without ties or visits to Ecuador. It is also noted that the applicant's spouse would leave behind family members, including her sister and mother, upon her departure from the United States. The applicant's spouse's sister and mother submitted letters of support on behalf of the applicant. The record indicates that the applicant's spouse resides with her sister while the applicant's spouse's mother babysits her children.

The country condition background information submitted by the applicant states that adequate medical and dental care is available in the major cities of Ecuador. Accordingly, there is no indication that the applicant's spouse would be unable to obtain medical care upon relocation to Ecuador. However, the record also contains a physician's letter stating that the applicant's spouse, for seven years, has suffered from medical conditions requiring medication and close follow-up, which she has received in the United States.

In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if she relocated to Ecuador. The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984).

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 in this case.

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 balancing positive and negative factors to determine whether the applicant merits this 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. Accordingly, the prior AAO decision is affirmed.

ORDER: The motion is granted and the prior AAO decision dismissing the appeal is affirmed.