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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: AUG 2 5 2015

FILE #:

APPLICATION RECEIPT #:

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:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the New York, New York District (the director) denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission into the United States through fraud or the willful misrepresentation of a material fact. The applicant's spouse is a U.S. citizen, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative, she filed on his behalf. The applicant's mother and father are U.S. lawful permanent residents. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse and family.

The director determined that the applicant did not establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601 accordingly. *Decision of Director*, dated September 30, 2014.

On appeal the applicant asserts, through counsel, that the evidence demonstrates that his spouse will experience extreme financial and emotional hardship if he is denied admission into the United States. He indicates further that the record establishes that his mother also would experience extreme physical and emotional hardship, and that both of his parents would experience extreme financial hardship if he is denied admission into the United States.

The record includes, but is not limited to, affidavits from the applicant's wife, mother and father; school records for the applicant's son; medical, employment and financial documentation; and documents pertaining to identity and immigration status. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

> (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.
>
> . . . .
>
> (iii) Waiver authorized. - For provision authorizing waiver of clause (i), see subsection (i).

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

> (1) The Attorney General [now Secretary, Department of Homeland Security (Secretary)] may, in the discretion of the [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 [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 on October 3, 1998, the applicant attempted to gain admission into the United States by presenting a fraudulent passport. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact. The applicant does not contest his inadmissibility.

Section 212(i) of the Act provides that 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. Moreover, 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-Moralez,* 21 I&N Dec. 296 (BIA 1996).

The applicant's qualifying relatives are his U.S. citizen spouse and his U.S. lawful permanent resident mother and father. The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse and parents are the only qualifying relatives for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse and parents.

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 (BIA) 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 BIA 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 BIA 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 BIA 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 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 applicant asserts on appeal that his spouse would experience extreme hardship if he is denied admission into the United States and she remains here without him. The applicant submits an affidavit from his wife, an October 2013 biopsychosocial assessment by a licensed clinical social worker, special-education services documentation for his son, and financial evidence to support his assertions.

The applicant's wife states, in an affidavit dated December 13, 2013, that she has known the applicant for over 15 years; they married at a young age; and they share their home with her parents. The applicant's spouse's claims of emotional hardship relate primarily to the hardship she fears their son would experience if the applicant were removed. She states that their year-old son is a "special needs child" due to "cognitive and behavioral challenges"; that he receives academic accommodations, supportive services, and group counseling at his school; and that his learning disability and speech impediment are exacerbated when he is stressed. She indicates that

their son is very close to the applicant and that his conditions would worsen if the applicant moved to Ecuador and he remained with her in the United States. This, in turn, would cause her stress and hardship.

The applicant submits an October 2013 biopsychosocial assessment prepared by a licensed clinical social worker after one 90-minute interview with the applicant, his wife, son, and parents. The assessment repeats some information from the applicant's wife's affidavit, based on her report of events and circumstances, and notes that the applicant's spouse was "visibly distressed, both verbally and non-verbally," when discussing her potential emotional and financial hardship as a single parent supporting herself and their son. The assessment concludes that the potential hardship to the applicant's wife "seems extreme" in the event that the applicant is removed from the United States.

An individualized education program from the applicant's son's school indicates that his performance has been below grade level and that he does not do well socially with his peers. In addition, the applicant submits, from their son's school, a 2013 proposal to continue his special-education services, which recommends that the applicant's son receive continued special-education services for speech impairment.

In the October 2013 biopsychosocial assessment, the social worker notes a speech impediment and "idiosyncratic communication process" in the applicant's son. The social worker notes that the applicant's son's fidgeting increased as they spoke about the applicant's possible removal and suggests that he was distressed due to "the possible loss of [the applicant] and sole reliance on his mother," concluding that the applicant's son "may fear" his mother's capacity for effective single parenting. The social worker also reviewed the applicant's son's learning program documents; noted that the applicant's son appeared to receive academic accommodations and supportive services for his intellectual challenges and language-processing disability; and stated that the school documents reflect "delays in learning skills, social skills, language skills and attentional skills which interfere with [the applicant's son's] participation in age appropriate activities."

The applicant's spouse also states that she fears that the close relationship she has with the applicant's family would be negatively affected due to tensions caused by the applicant's departure to Ecuador, causing their son and her further stress.

In addition, the applicant's spouse states that she has obtained an undergraduate degree in finance, that she works in investor services, and that her career is "progressing nicely." She indicates that without the applicant's assistance with child care responsibilities, it would become "impossible to further [her] career," which she has worked "so hard to build." She also indicates that the financial strain of visiting the applicant in Ecuador would cause her and their son additional stress.

According to the family's 2012 federal income tax return and employment earnings evidence, the applicant and his wife's total income for the year was $52,345, of which applicant's wife earned $43,658. The record therefore reflects that the applicant's wife is the primary income earner in the family. The applicant provides no evidence of expenses, assets and costs of child care and travel

to Ecuador. Further, the record contains no evidence to support concluding that the applicant's wife's career would be negatively affected if he left the United States and she remained here.

The record lacks evidence to corroborate claims that the applicant's wife would experience professional or financial hardship if the applicant returned to Ecuador and she remained here. While the record reflects she would experience a degree of emotional hardship, the evidence also shows that the applicant's wife has supportive family members near her who may be able to assist her. Overall, considering the evidence of hardship in the aggregate, the record does not establish that the applicant's wife would suffer extreme hardship if the applicant was denied admission and she remained in the United States.

The applicant asserts that his mother and father would also experience extreme hardship if he is denied admission into the United States and they remain here. The applicant submits affidavits from his mother and father, the October 2013 biopsychosocial assessment, and medical evidence to support his assertions.

The applicant's mother indicates, in an affidavit dated November 21, 2013, that she suffers from type 2 diabetes, which she manages with medication and diet modification, and that extreme emotional stress could cause her difficulties in managing her blood sugar levels. She adds that, due to her diabetes, extreme stress could cause her to become depressed and physically weak, that the thought of the applicant returning to Ecuador has caused her to experience some of these symptoms, and that she cannot be alone due to an increased risk of falling. The applicant's mother also indicates that she is no longer able to work due to her diabetes symptoms; that the applicant's father, a construction worker, is the sole supporter for their family; and that the applicant and his wife occasionally provide financial assistance.

The applicant's father states, in an affidavit dated, November 21, 2013, that he lives with his wife and three sons and he fears that tensions related to the applicant's departure could affect the relationship they have with the applicant's spouse's family, causing the entire family to experience stress. He states that the thought of the applicant returning to Ecuador causes the applicant's mother "severe emotional stress." He states further that if the applicant's mother's condition deteriorates and she needs a caretaker due to stress and her diabetes, he does not know how he would be able to work full time, support his family, and care for his wife. He indicates that the applicant and the applicant's wife sometimes help him financially. He states further that, for financial reasons, he and his wife would not be able to visit the applicant often in Ecuador, and that he does not believe that the applicant would be able to find work in Ecuador

The October 2013, biopsychosocial assessment prepared by the licensed clinical social worker repeats information from the applicant's parents' affidavits, based on their descriptions of events and circumstances during their interview. In addition, the social worker notes that the applicant's mother was "overcome with tears when expressing her anxiety around her son's possible deportation." The social worker concludes that the applicant's father would "suffer his own sense of loss, while also bearing witness to the physical and psychological deterioration of his wife, grandson, and daughter-in-law."

In addition, although the record contains a one-page document reflecting that the applicant's mother was seen by a doctor for a diabetes follow-up visit on October 17, 2013, the document does not explain the severity of the applicant's mother's condition. The medical evidence also does not show that the applicant's mother suffers from physical or emotional problems or complications due to her diabetes. In addition, the evidence does not reflect that the applicant's mother is unable to work or care for herself due to her diabetes.

The record also does not contain evidence of the applicant's parents' income and expenses, or other financial evidence, to corroborate assertions that the applicant helps his parents financially, or to support a finding that they would experience financial hardship if the applicant returned to Ecuador and they remained in the United States. Overall, considering the evidence in the aggregate, the record does not establish that the applicant's mother and father would suffer extreme hardship if the applicant were denied admission and they remained in the United States.

Regarding hardship upon relocation to Ecuador, the applicant submits an affidavit from his wife, and country-conditions reports with general information on the political structure and conditions in Ecuador, crime rates, and the availability of health care in Ecuador.

The applicant's wife, a native of Ecuador, asserts in her affidavit that their son would be unable to learn Spanish due to cognitive difficulties, and he would be unable to obtain the special-education services he needs in Ecuador; therefore his speech and behavioral problems would worsen. The country-conditions evidence in the record, however, lacks information about the availability of educational and related social services in Ecuador. The applicant's wife also asserts in her affidavit that the applicant would be unable to find work in Ecuador due to his age, a concern also raised by the applicant's parents in their affidavits. The applicant, however, provides no country-conditions evidence to corroborate these employment-related claims.

The applicant does not claim that his mother and father, both natives of Ecuador, would experience hardship if they relocated with the applicant. According to the record, the applicant's parents have been U.S. lawful permanent residents since 2007. One of their daughters lives in Ecuador and they have significant family ties to the United States. The applicant submits country-conditions reports showing that crime is a significant problem but that adequate medical care is available in Ecuador's major cities.

The evidence does not corroborate assertions that the applicant's child would be unable to learn Spanish or receive special education services in Ecuador, that the applicant would be unable to find work there, or that the applicant's wife would experience hardships in Ecuador that would rise above the common results of removal or inadmissibility to the level of extreme hardship. The applicant also has not demonstrated that his parents would experience extreme hardship if they relocated to Ecuador. The record therefore does not establish show that hardships faced by the applicant's qualifying relatives in Ecuador, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

Although the applicant's wife's and parents' concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of

inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. *See e.g., Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch,* 21 I&N Dec. at 627. In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's wife and parents, considered in the aggregate, rise beyond the common results of inadmissibility to the level of extreme hardship. The applicant has not established extreme hardship to a qualifying relative, as required under section 212(i) of the Act. Having found the applicant ineligible for relief, we find no purpose would be served in discussing 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.