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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: AUG 2 7 2015

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 District Director, New York District, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. 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 Bangladesh who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for making a material misrepresentation to gain admission into the United States. The applicant is the beneficiary of a Form I-130, Petition for Alien Relative, that his U.S. citizen wife filed on his behalf. He seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife.

The District Director concluded that the applicant did not establish that his wife would experience extreme hardship if the waiver was not granted and denied the application accordingly. *See Decision of District Director,* dated February 7, 2014.

On appeal, the applicant, through counsel, asserts that the District Director did not properly weigh the evidence of hardship and that the denial decision, as a result, is legally and factually incorrect. *See Form I-290B, Notice of Appeal or Motion*, dated March 7, 2014.

The record includes, but is not limited to: a brief; identity and relationship documents; financial documents; a psychologist's evaluation of the applicant's spouse; a physician's letter; and wedding photographs. 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:

> (1)The Attorney General [now the Secretary 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 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.

In the present case, the record reflects that the applicant was initially admitted into the United States as a lawful permanent resident on April 6, 2002. He left the United States and applied for admission again on March 23, 2007. According to the Form I-862, Notice to Appear, he was charged with

attempting to procure admission into the United States by willfully misrepresenting a material fact, because he was not in fact a returning lawful permanent resident or related to the individual through whom he allegedly was granted an immigrant visa. On June 16, 2009, the applicant conceded in immigration court that he had willfully misrepresented a material fact to procure admission into the United States. The applicant is therefore inadmissible under section 212(a)(6)(C) of the Act for procuring entry into the United States through fraud and misrepresentation.

The applicant, through counsel, asserts that the immigration judge found that the applicant had "immediately admitted" that the name he used was not his real name and identity. The record includes the transcripts of the applicant's immigration hearings, and the transcripts, instead of supporting this assertion, show that the applicant conceded that he had made a material misrepresentation to gain admission into the United States.

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. The applicant's qualifying relative is his U.S. citizen spouse. 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).

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 applicant, through counsel, asserts that his U.S. citizen wife will suffer extreme hardship if his application is denied and she remains in the United States without him. In support of his claim, he provides a psychological assessment and a doctor's letter.

The applicant states that he and his wife are trying to have a child but that his wife suffers from infertility. The applicant submits a letter from her physician, stating that the applicant's wife has a history of hypothyroidism, hyperlipidemia, diabetes, reactive airway disease and infertility, "for which she needs" the applicant.

The applicant, through counsel, also indicates that he is the primary breadwinner and his wife could not afford their rent without him. The record shows that the applicant is employed as a taxi driver and his wife works as a beauty technician; however, it also contains a tax return, indicating that the applicant was the sole breadwinner in the family in 2012. According to the applicant's wife's Form G-325A, Biographic Information, she has worked as a beauty technician since 2007. However, she reported no income on their 2012 Form 10140 Income Tax Return.

The psychologist's evaluation and counsel's brief both address the applicant's sposue's emotional hardship. The psychologist relates that the applicant's wife relies on the applicant to take her to appointments, as she is not comfortable communicating in English, and she relies on him to do much

of the cooking, shopping and cleaning. The psychologist writes that when depressed, the applicant's wife's "functioning becomes impaired. Currently, due to the stress of worrying about infertility and more importantly [the applicant's immigration] situation, she has been exhibiting anxious and depressive symptoms again." According to this evaluation, the applicant's wife came to the United States with her first husband, who abandoned her. The psychologist states that the applicant's wife suffered emotionally as a result of that abandonment. The applicant, through counsel, asserts that the applicant's wife is afraid of her ex-husband and that she relies on the applicant for support and protection. The psychologist adds that after the end of her first marriage, the applicant's wife resided with a cousin who recently and unexpectedly died, adding to her emotional hardship.

Having considered the applicant's claims and the evidence provided to support them, we find the record insufficient to establish that the applicant's spouse would experience extreme hardship if separated from the applicant. Although the record establishes that the applicant's spouse would experience some degree of hardship, the extent of her financial and emotional hardship, as reflected in the evidence, is unclear. The record does not establish that she would experience hardship that was unusual or beyond that which would normally be expected upon separation.

Next, we will address whether the applicant has established that his wife would suffer extreme hardship if she were to relocate with him to Bangladesh. The applicant's wife, a native of Bangladesh, came to the United States in 2007 because of her arranged marriage, which ended in divorce. She became a U.S. citizen in The applicant states that both he and his wife have limited contact with their respective families in Bangladesh. Some of the applicant's wife's family were not supportive of her decision to divorce.

The applicant, through counsel, asserts that the applicant and his wife are undergoing fertility treatments and that there are very few fertility clinics in Bangladesh. The record lacks evidence to corroborate counsel's claims. The doctor's letter in the record does not address the availability of fertility treatments in Bangladesh. While the doctor states the applicant's wife has a history of infertility, he does not affirmatively explain that she is undergoing fertility treatment. The applicant did not provide any corroborating evidence describing the availability of fertility treatment in Bangladesh. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's wife, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The applicant does not submit evidence of conditions in Bangladesh that could affect his spouse emotionally, medically, or financially, to such an extent that her hardship could be considered extreme. The applicant has not established extreme hardship to his U.S. 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 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.