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

U.S. Citizenship and Immigration Services

(b)(6)

Date: AUG 3 1 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,

for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey, denied the application. 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 Brazil 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 with her U.S. citizen spouse and child, born in June 2014.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director,* dated November 7, 2014.

On appeal the applicant contends that USCIS erred by not considering the cumulative impact of the emotional, psychological, financial, and medical hardship that her spouse would suffer if she is removed from the United States. With the appeal the applicant submits a brief, biographic documentation, an affidavit from her spouse, and a letter from the spouse's physician. 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 on July 27, 2009, the applicant entered the United States by presenting a passport belonging to another person. Based on this information the field office director determined the applicant was inadmissible for fraud or misrepresentation. The applicant has not contested the 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. Hardship to the applicant or their child can be considered only insofar as it results in hardship to a 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,* 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 the applicant asserts that her spouse has a medical condition for which she provides assistance by assuring that he takes medication, attends medical appointments, exercises, and maintains proper weight. She asserts that her spouse cannot do this without her support. In his August 2014 affidavit the applicant's spouse states that the applicant helps him maintain his diet and keep up with medical visits. The spouse notes his medical diagnosis and states that the applicant encourages him to lose weight, exercises with him, and reminds him to stay away from sweets and to take his pills; otherwise, he contends that he gets migraines.

A letter from the spouse's physician, dated July 30, 2014, indicates that the spouse has been diagnosed with diabetes mellitus type II along with arterial hypertension and dyslipidemia. The letter states that the spouse's job as a correctional officer is challenging and makes it difficult to maintain a proper medication regimen, balanced diet, and daily exercise to keep his diabetes under control and blood pressure at normal levels, and that the applicant is crucial in keeping him on medications, eating healthy and exercising daily. The letter states that it would be detrimental to the spouse's health if he travels to and from Brazil.

The statements from the applicant and her spouse and the physician's letter show that the applicant's spouse has health issues and the applicant assists him. However, the record does not provide an explanation of the seriousness of the spouse's condition or indicate that any needed treatment requires the applicant's physical presence in the United States or that the spouse is unable to maintain a healthy regimen without the applicant's support.

The applicant further asserts that it would be a burden for her spouse to raise their child on his own and this would cause extreme emotional, psychological, and financial hardship where the cumulative effect would be devastating. The applicant asserts that if she returns to Brazil her spouse cannot work full-time while caring for their baby, so he would either have to stop working or hire a full-time babysitter. Either choice, she contends, would cause her spouse financial hardship. The spouse states that the applicant takes their baby to the doctor and cares for him and that she shows love and devotion. The spouse asserts that without the applicant he cannot have a full-time job and support

the household and take care of the baby while bearing with the emotional hardship of separation from the applicant.

Financial documents submitted to the record include pay statements for the spouse from 2014, and income tax returns and W-2 statements for the spouse from 2012, 2011, and 2010, as well as bank statements from 2014. The records indicate the spouse earned more than $60,000 in 2012. No additional documentation has been submitted to the record to establish any other expenses incurred by the applicant's spouse, or estimated costs of child care, to support the assertion that the applicant's spouse would suffer financial hardship if the applicant were unable to remain in the United States.

Further, the applicant failed to provide detail or supporting evidence about emotional hardships her spouse would experience due to separation from the applicant and how such emotional hardships are outside the ordinary consequences of removal. The assertions made by the applicant and her spouse have been considered. However, assertions cannot be given great weight absent supporting evidence. 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)).

We find that the applicant has failed to establish that her qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would experience 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 hardship beyond the common results of removal upon separation from the applicant.

We also find the record fails to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Brazil to reside with the applicant. The spouse asserts that he cannot go to Brazil because he is not accustomed to their way of life, does not speak Portuguese, and would have to leave his positon as correctional officer to go to an unfamiliar country where the language barrier would interfere with job opportunities and make it difficult to support the applicant and their child. He further asserts that relocating would affect his health and his medical condition would deteriorate.

However, the record does not contain any country condition evidence or other documentary evidence to support the assertion that the applicant's spouse would experience extreme hardship if he were to relocate to Brazil. The spouse asserts that he would be unable to obtain employment and that his medical condition would deteriorate, but no evidence has been submitted to establish that the spouse would be unable to obtain employment or adequate medical care. The record also fails to address where the applicant would live if she returned to Brazil, and therefore fails to establish that economic and health concerns regarding relocating to Brazil would rise to the level of extreme hardship for her spouse. As noted above, going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 qualifying 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.