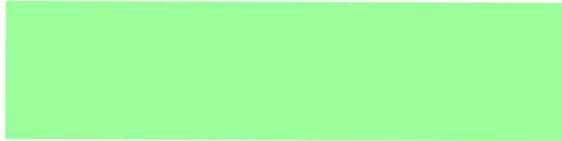




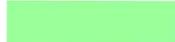
U.S. Citizenship
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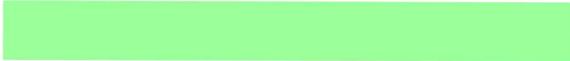
(b)(6)



DATE: FEB 11 2015

OFFICE: LOS ANGELES

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:

SELF-REPRESENTED

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, California denied the waiver application. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). This matter is now before the AAO on motion. The motion will be granted and the prior decision of the AAO will be affirmed.

The record reflects that the applicant is a native and citizen of El Salvador who was found to be inadmissible 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. 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 lawful permanent resident mother and U.S. citizen child.

The Field Office Director determined that the applicant had failed to demonstrate that a qualifying relative would experience extreme hardship upon denial of his waiver application and denied the application accordingly. *See Decision of Field Office Director*, dated July 11, 2013. On appeal, the AAO also determined that the applicant had failed to demonstrate extreme hardship to a qualifying relative upon denial of his waiver application and dismissed the appeal accordingly. *See Decision of the AAO*, dated August 26, 2014.

On motion, the applicant submitted a letter, financial documents, and a psychological evaluation for his mother. The entire record was reviewed and considered in rendering this decision.

The applicant asserts that he is not inadmissible under section 212(a)(6)(C), as he was an innocent victim who could barely speak or write English at the time his Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, was filed. As such, the applicant contends that he could not have knowingly misrepresented a material fact to procure immigration benefits.

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.

Section 212(i) of the Act provides that:

- (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 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 the applicant was a beneficiary of a Form I-360, filed to classify him as a special immigrant religious worker. The applicant's Form I-360 was denied on May 8, 2007 by the California Service Center, as the evidence was insufficient to establish that a prospective employer could pay the beneficiary's proffered wage. On October 1, 2008, we dismissed the applicant's petitioner's Form I-360 appeal, finding the petitioner's claims to be inconsistent, lacking in credibility and failing to conform to reality. In the same decision, we found that the applicant, in signing alleged pay receipts and other documents in furtherance of the Form I-360, had willfully misrepresented material facts.

The applicant asserts that he could not have knowingly misrepresented a material fact at the time the Form I-360 was filed, as he could barely read and write English at the time. The applicant contends that he was an innocent victim of deceit, deception and swindle in the filing of the Form I-360 application. The applicant does not dispute that it is his signature on supporting documents, such as pay receipts and tax returns, accompanying the Form I-360 filing. The burden is on the applicant to demonstrate by a preponderance of the evidence that he was unaware of the false representations in his application. See Section 291 of the Act, 8 U.S.C. § 1361. The evidence is insufficient to find that the applicant did not willfully misrepresent a material fact to procure a nonimmigrant visa, and the applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for procuring a visa through fraud or misrepresentation.

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 lawful permanent resident mother 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-Morales*, 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 38-year-old native and citizen of El Salvador. The applicant's mother is a 61-year-old native of El Salvador and lawful permanent resident of the United States. The applicant is currently residing in [REDACTED] California.

The applicant's mother asserts that it would be hard and terrible for the whole family if he could not adjust his status in the United States, including the applicant's U.S. citizen daughter. The

applicant also contends that it would be devastating for both his mother daughter if he could not remain in the United States. It is noted that the applicant's child is not a qualifying relative in the context of this application so that any hardship she would experience will be considered only insofar as it affects the applicant's mother.

The record contains a psychological evaluation of the applicant's mother stating that when the applicant was approximately twelve years of age she left him behind in El Salvador when she entered the United States to work in [REDACTED]. The applicant's mother stated that she wished to visit her children in El Salvador but financially unable, so there is no indication that the applicant's mother saw the applicant from the time he was approximately twelve years of age until his entry into the United States. The record reflects that the applicant entered the United States in November [REDACTED] at the age of 27.

The psychological evaluation states that the applicant's mother feels that she and the applicant have made up for lost time and have a great relationship. The evaluation further states that the applicant's mother has increased anxiety and frustration due to the applicant's immigration issues and is concerned that he would face violence and economic problems upon return to El Salvador. The applicant's mother is also concerned that the applicant's daughter will be left in the United States with her stepmother if the applicant departs, as she herself was as a child, with ill effects. The evaluation diagnoses the applicant's mother with dysthymic disorder, characterized by emotional depression that persists for years, usually with no more than moderate intensity. The applicant's mother was recommended to seek individual psychotherapy sessions.

The applicant's mother asserts that she cannot financially afford to be alone because she cannot afford payments for her necessities of life without the applicant. The psychological evaluation of the applicant's mother states that the applicant is now able to support her and tend to all of her needs, including paying for her travel to El Salvador to receive medical attention. The psychological evaluation also states that the applicant's mother stated that she and her husband are heavily financially dependent on the applicant, as recently she has only earned a maximum of fifteen dollars at her magazine stand and her husband works a minimum wage job.

The record does not contain any medical documentation concerning the applicant's mother, including any diagnoses for any medial ailments. The record contains a 2013 tax return for the applicant indicating an income of 18,033 dollars. The last tax return for the applicant's mother and step-father is from 2009, indicating an income of 12,801 dollars. The record does not contain any updated financial documents for them. The record also does not contain any receipts indicating the extent to which the applicant is providing financial support to his mother or a monthly accounting from the applicant's mother including income and expenses with supporting documentation. It is acknowledged that the applicant entered the United States over eleven years ago, but there is also no explanation for how the applicant's mother supported herself for the fifteen years she lived apart from the applicant and could also afford to send money to support family members in El Salvador, as indicated in her psychological evaluation.

It is acknowledged that separation from a parent or child often creates hardship for both parties, and the evidence indicates that the applicant's mother 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 mother would suffer extreme hardship upon separation from the applicant.

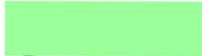
The record does not contain any claims of hardship the applicant's mother would suffer if she returned to El Salvador. The applicant's mother's psychological evaluation states that she would be concerned for the safety and economic standing of the applicant if he returned to El Salvador. The applicant's mother's psychological evaluation contains statistics concerning poverty levels and homicide rates in El Salvador. It is noted that the record includes the curriculum vitae for the applicant's mother's psychologist evaluator and there is no indication that she has professional expertise in the country conditions of El Salvador. The record does not contain further supporting documentation concerning country conditions in El Salvador, including the articles cited in the psychological evaluation. It is also noted that the evaluation states that the applicant's mother returns to El Salvador for medical attention, travel financed by the applicant. The record reflects that the applicant's mother is a native of El Salvador.

There is insufficient evidence in the record to show that the hardships faced by the applicant's mother, in the aggregate, would rise to the level of extreme hardship if she relocated to El Salvador.

Although the depth of concern over the applicant's family's circumstances is neither doubted nor minimized, the fact remains that a waiver of inadmissibility is available only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, a waiver of inadmissibility is available only in cases of extreme hardship and not in every case where a qualifying relationship exists. 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).

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 lawful permanent resident mother 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.

(b)(6)



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NON-PRECEDENT DECISION

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.