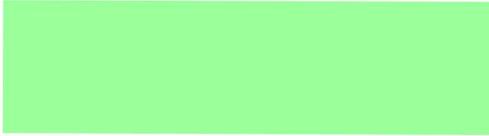




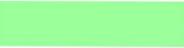
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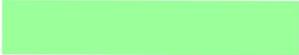
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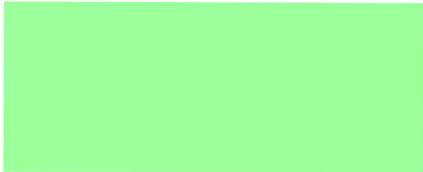
OFFICE: NEWARK

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:

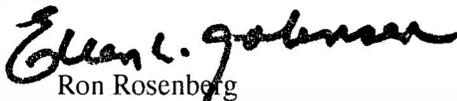


INSTRUCTIONS:

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 Field Office Director, Newark, New Jersey denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant 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 procuring an immigration benefit by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and U.S. citizen and legal permanent resident children.

The Field Office 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 Field Office Director*, dated April 11, 2012.

On appeal, filed on May 3, 2012 and received by us on November 10, 2014, counsel for the applicant asserts that the applicant's spouse is headed towards depression because of his concern for his son's emotional and medical state and his own concern for the applicant if she returns to Indonesia. Counsel further asserts that the applicant's spouse should not be expected to relocate to Indonesia because it is difficult to start employment over the age of 35 and his Christianity will make it particularly difficult to support his family.

In support of the waiver application and appeal, the applicant submitted an affidavit, an affidavit from her spouse, identity documents, an employment letter for her spouse, medical records concerning her son, educational documents concerning her son, financial documentation, a psychological assessment, background country conditions concerning Indonesia and a letter from the family's pastor. 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...

The record reflects that the applicant entered the United States with a passport belonging to another individual on December 26, 1999. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States through fraud or misrepresentation. The applicant does not dispute this ground of inadmissibility on appeal.

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 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 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 record reflects that the applicant is a 45-year-old native and citizen of Indonesia. The applicant’s spouse is a 52-year-old native of Indonesia and citizen of the United States. The applicant is currently residing with her spouse and child in [REDACTED] New Jersey.

The applicant’s spouse asserts that he is very upset at the thought of the applicant returning to Indonesia, with or without their child, as they are Seventh Day Adventists. The applicant’s spouse contends that their family’s sect’s churches are attacked by radical groups in Indonesia and because his and the applicant’s parents are deceased, the applicant will not be protected. The record contains a psychological assessment stating that the applicant’s youngest child is experiencing nightmares because of the applicant’s spouse’s anxiety and the child’s concern about the religious persecution of Christians in Indonesia. The assessment states that the applicant’s spouse is further experiencing strain because his adult children have been asking him about the applicant’s immigration status. The assessment states that the applicant’s youngest child is beginning to show signs of depression and the applicant’s spouse’s humor masks a growing depression.

The psychological assessment in the record, dated April 2012, states that the applicant’s family was interviewed at her attorney’s office and does not indicate whether the family members were interviewed separately, the length of the interview process or whether the assessment was based on more than a single interview. The assessment, under two pages in full, does not specifically indicate the signs of depression exhibited by the applicant’s son or the basis for determining that

the applicant's spouse is masking a growing depression. The assessment also does not contain any recommendations for treatment for the applicant's spouse or child. It is noted that the applicant's son is not a qualifying relative in the context of this application so that any hardship he would suffer will be considered only insofar as it affects the applicant's spouse.

The psychological assessment states that the applicant's spouse will experience a loss of income to assist in supporting the medical costs of their youngest son. The assessment indicates that since the applicant lost her position at [REDACTED] the family does not have health insurance. The record contains a letter from the applicant's spouse's employer detailing his wages, but there is no supporting documentation concerning whether the applicant secured employment after losing her position with [REDACTED] or is currently earning income. 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)).

The applicant's spouse asserts that his youngest son is seriously ill with asthma and uses a nebulizer on a regular basis. The applicant's spouse contends that the applicant usually handles their son's medical care and he is concerned about their son's health upon separation from the applicant. The applicant's spouse also contends that he is often called out for work in the early morning hours and would lose his position if he had to act as the caretaker for his son and prepare him for school during those hours.

The record contains medical documentation for the applicant's son consisting of prescriptions, but does not contain a clear explanation of the current medical condition of the applicant's son. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, we are not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

The record reflects that the applicant's youngest son is currently fourteen years of age and there is no indication that he would be unable to get ready for school without the assistance of the applicant's spouse. In the event that the applicant's spouse would retain a caretaker for his son, the most recent W-2 form for him, from 2009, indicates wages of 48,110 dollars. The record contains a lease bill for the applicant's spouse with a balance of 1,491 dollars. Overall, the record is insufficient to demonstrate that the applicant's spouse would be unable to afford a caretaker for his son, if needed, or otherwise meet his financial obligations in the absence of 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 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.

Counsel for the applicant asserts that the applicant's spouse cannot be expected to relocate to Indonesia because he would have problems securing employment as an individual over the age

of 35. Counsel also contends that the applicant's spouse's Christian faith would make it particularly difficult to support his family members, as his identity card would indicate his Christianity. The record does not contain any background information relating to the difficulty in securing employment in Indonesia over the age of 35.

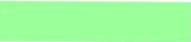
The applicant's spouse asserts that he is fearful of the religious situation in Indonesia and that he has retained a job in the United States that allows him to meet his financial obligations. The record contains a letter from the applicant's spouse's current employer stating that the applicant's spouse has been employed with the same company since 2007. The record also reflects that the applicant's spouse has been residing in the United States since July 1992, over 22 years.

The record contains a letter from the applicant's spouse's pastor stating that the applicant's spouse is a board member of the church and serves as the director of health and temperance at [REDACTED] Seventh-Day Adventist Church. The record contains background information concerning Christianity in Indonesia, including a 2010 U.S. Department Human Rights Report and articles. The U.S. Department of State 2013 Report on International Religious Freedom, Indonesia, states that the constitution protects religious freedom, but some laws, policies and local regulations restrict religious freedom for members of minority religious groups. Though the report states that identity card applicants can legally leave the religion section blank, there are reports of individuals facing obstacles in exercising this right.

In this case, the applicant has demonstrated that her spouse has longstanding residence and ties in the United States. The record also reflects that the applicant's spouse is a practicing and active member of a Seventh-Day Adventist Church and country condition reports indicate that he could face restrictions on his religious freedom upon relocation to Indonesia. As such, 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 he relocated to Indonesia.

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 her 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 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.

ORDER: The appeal is dismissed.