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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: DEC 2 3 2013 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) and section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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. A subsequent appeal was denied by the Administrative Appeals Office (AAO) on appeal. The matter is now before the AAO on a motion to reconsider. The motion will be granted and the prior decision of the AAO will be affirmed.

The applicant is a native and citizen of Argentina 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 having procured entry to the United States by fraud or willful misrepresentation. The applicant was also found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and the applicant does not merit a favorable exercise of discretion. The Field Office denied the application accordingly. *See Decision of the Field Office Director*, dated March 19, 2009. The AAO also determined that the applicant failed to demonstrate extreme hardship to a qualifying relative and denied his appeal accordingly. *See Decision of the AAO*, dated August 22, 2011.

On motion, counsel for the applicant asserts that the applicant has demonstrated that his spouse would suffer emotional and financial hardship upon separation from the applicant. Counsel further asserts that the applicant's spouse cannot reside with the applicant in Argentina because she is a U.S. citizen with no family ties in that country and would face unsafe conditions and other societal concerns upon relocation.

In support of the motion, the applicant submitted a letter from the applicant's spouse, medical documentation concerning the applicant's spouse, financial documentation, and family photographs. The entire record was reviewed and considered in rendering a decision on the motion.

Section 212(a)(9)(B) of the Act, in pertinent part, provides:

> (B) ALIENS UNLAWFULLY PRESENT.-
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> (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . .
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

. . .

> (v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant entered the United States pursuant to the Visa Waiver Program on August 10, 2000, with authorization to remain in the United States until November 9, 2000. The applicant remained in the United States beyond that date until his departure on December 9, 2001. The applicant accrued unlawful presence in the United States from November 10, 2000 until his departure on December 9, 2001. Accordingly, the applicant accrued over one year of unlawful presence in the United States, is seeking readmission within 10 years of his last departure, and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility pursuant to this section on motion.

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 applicant, following his departure from the United States on December 9, 2001, obtained a B1/B2 visitor's visa, issued on July 29, 2002. The applicant was admitted to the United States with that visa on August 16, 2002. On his visa application, the applicant indicated that his last entry to the United States took place on August 10, 2000. The applicant also indicated that this visit lasted only 28 days rather than over a year. As such, the applicant misrepresented the length

of his stay in the United States, concealing his prior overstay. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States by misrepresenting a material fact and does not dispute this ground of inadmissibility on motion.

Section 212(i) and 212(a)(9)(B)(v) waivers of the bars to admission resulting from inadmissibility pursuant to sections 212(a)(6)(C) and 212(a)(9)(B)(i)(II) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or other relatives are not considered in section 212(i) or 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's 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,* 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.

In the present case, the record reflects that the applicant is a 33 year-old native and citizen of Argentina. The applicant's spouse is a 34 year-old native and citizen of the United States. The applicant is currently residing with his spouse and children in Fords, New Jersey.

Counsel for the applicant asserts that the applicant's spouse is facing poverty and financial ruin due to the termination of the applicant's employment authorization. The record contains tax returns for the applicant and his spouse from 2010, which indicates a combined income of $66,451. The record does not contain supporting financial documentation, such as W-2s, indicating the income earned by each respective individual. Further, the record does not contain any updated, more recent documentation concerning the applicant's household's income. Counsel's brief contains an outline of the applicant's family's household expenses, stating that they have a monthly deficit of $698.75. The record contains supporting documentation concerning the applicant's spouse's previous salary and household bills. It is noted that there is no indication that the applicant's spouse has been past due on any payments or has been otherwise unable to meet her financial obligations.

The applicant's spouse asserts that she and the applicant love each other very much and want to raise their family and continue their lives together. Counsel for the applicant asserts that the applicant's spouse has visited her physician for anxiety, headaches, back pain, and insomnia due to the applicant's immigration issues. It is noted that the physician's letter referenced by counsel is not included in the record so that the AAO is relying upon counsel's assertions concerning its contents.

The applicant's spouse contends that there is no way that she could raise their children on her own because her children need a happy home with both of them. The applicant's spouse also contends that she earns extra money from the school for extra work and would be unable to put in those hours while raising a child alone. It is initially noted that the applicant's children are not qualifying relatives in the context of this application, so any hardship they would experience will be considered only insofar as it affects the applicant's spouse. It is acknowledged that separation from a spouse nearly always creates hardship for both parties, and the record establishes that the applicant's spouse would suffer emotional 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. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, a waiver of inadmissibility is only available in cases of extreme hardship, and not in every case where a qualifying relationship exists.

The applicant's spouse asserts that she has spent most of her life in the same area of New Jersey and intends to remain there for the rest of her life. The applicant's spouse asserts that she is a property owner who is employed in the same high school from which she graduated in 1997. The record contains supporting financial documentation indicating that the applicant's spouse purchased a home in Fords, New Jersey in 2008. In a letter dated April 5, 2009, the applicant's spouse also asserts that she has tenure in the school where she has been teaching for seven years and coaching soccer and softball. The applicant's spouse contends if she relocated to Argentina, she would be an immigrant with no guarantee of a steady job.

Counsel for the applicant asserts that the applicant's spouse cannot relocate to Argentina to reside with the applicant because she is a U.S. citizen without family ties in Argentina. The applicant's spouse asserts that she is from a large extended family in which her parents, aunts, uncles, and cousins have all been happily married for years. The applicant's spouse contends that she desires to provide her children with that same sense of family and togetherness.

The applicant's spouse asserts that she suffers from a thyroid problem for which she takes medication and visits a physician every six months. The applicant's spouse contends that her medical ailment could worsen upon relocation. It is noted that the medical documentation concerning the applicant's spouse consist of medical tests and notes concerning her thyroid condition, but no further detail about her condition and treatment. Counsel also asserts that upon relocation to Argentina, the applicant's spouse would face gender-based violence and other societal concerns including unemployment protests and demonstrations, high levels of urban crime, and poor housing. It is noted that the U.S. Department of State's Country Specific Information for Argentina, dated February 22, 2013, indicates that most U.S. citizens visit Argentina without incident. The U.S. Department of State has not issued any travel warnings concerning Argentina.

Based upon the applicant's spouse's extensive ties to her locality, including employment in a tenured position, family ties, and home ownership, as well as her lack of ties in Argentina and continued medical treatment in the United States; 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 she relocated to Argentina. 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 AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under sections 212(i) and 212(a)(9)(B)(v) 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 proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the prior decision of the AAO is affirmed, and the underlying application remains denied.

ORDER: The motion is granted and the prior decision of the AAO dismissing the appeal is affirmed