U.S. Department of Homeland Security
20 Mass. Avenue, N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CHICAGO, IL Date: DEC 0 8 2006

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Chicago, IL, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [redacted] (Mrs. [redacted], is a native and citizen of Montenegro who attempted to enter the United States on October 20, 1995, using a fraudulent visa, and applied for adjustment of status on June 28, 1999. 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 having sought to procure admission into the United States by fraud or willful misrepresentation. In order to remain in the United States with her U.S. citizen (USC) spouse, [redacted] (Mr. [redacted] and USC children, the applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The record reflects that on October 20, 1995, Mrs. [redacted] attempted to enter the United States by presenting a Yugoslavian passport with a fraudulent nonimmigrant visa to an immigration officer at Chicago O-Hare International Airport. As a result of this misrepresentation, the district director found the applicant to be inadmissible to the United States. *District Director's decision,* dated January 25, 2005. The district director also found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Id.*

On appeal, counsel submits a brief and previously submitted documents. The record includes the following: a hardship statement from Mr. [redacted] statement from Mrs. [redacted] a statement from Mr. [redacted] mother and proof of U.S. citizenship; a statement from Mr. [redacted] father and proof of U.S. citizenship; a copy of Mr. and Mrs. [redacted] marriage certificate; a copy of Mr. [redacted] naturalization certificate; the birth certificates of their three U.S. citizen children, [redacted] age 9, [redacted] age 7, and [redacted] age 4; documents relating to [redacted] learning disability and autism; and income tax records from 2001-2003. The AAO reviewed the entire record in arriving at a decision on the appeal.

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.

A section 212(i) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on the USC or lawful permanent resident spouse or parent of the applicant. Hardship to the

applicant and her USC children is only considered insofar as it may affect her qualifying relative, in this case, her USC husband.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez, supra* at 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family 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 health conditions, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch,* 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, the BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

Counsel asserts that the denial of the Form I-601 would result in extreme hardship to Mr [redacted] because he would be required to raise his three children as a single parent. Counsel asserts that Mr. [redacted] parents are too old to participate in the care of the children. The applicant did not submit a breakdown of expenses or documentation regarding the average price of childcare in the area to show that Mr. [redacted] would be unable to pay these expenses or that inability to pay these expenses would result in uncommon or extreme hardship to him. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Direct hardship to an applicant's child is not considered in waiver proceedings under section 212(i) of the Act. However, all instances of hardship to qualifying relatives must be considered in the aggregate. As counsel correctly suggests, hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. When a qualifying relative is left alone in the United States to care for children, it is reasonable to expect that the children's emotional state due to separation from the other parent will have an impact on the qualifying relative. Yet counsel has not established that the applicant's husband will experience consequences that are sufficiently different or more severe than those commonly experienced by families who are separated as a result of inadmissibility.

Counsel asserts that Mr. [redacted] would suffer extreme hardship if Mrs. Form I-601 is denied because without the presence of his wife he could not perform his job and as a result he would lose his home, his job, and his children would lose their medical benefits. Counsel asserts that Mr. [redacted] and his children would have to live without the love, care, and support of Mrs. [redacted] Counsel has not provided documentation to show why Mr. [redacted] and his children could not relocate to Montenegro to avoid separation from Mrs. [redacted] In addition counsel has submitted no documentation to show that Mr. [redacted]

cannot financially provide for himself and his children in the United States. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel asserts that Mr. [redacted] will suffer extreme emotional hardship if Mrs. [redacted] is not admitted to the United States, yet does not submit objective documentation to supplement Mr. [redacted] claim of emotional hardship. *Matter of Obaigbena.*

Counsel asserts that Mr. [redacted] will have to support his family in the United States and his wife in Montenegro on a salary of $35,000 per year. Counsel does not indicate why and submits no documentation to establish that Mrs. [redacted] could not find gainful employment in Montenegro to support herself. While existing economic conditions in Montenegro are considerations in determining extreme hardship, the applicant has not submitted documentation about these conditions or evidence of how these conditions would affect her or her husband. The applicant does not submit documentation demonstrating why someone in her situation would be unable to find employment in Montenegro. *Matter of Soffici.*

Counsel asserts that Mr. [redacted] would not be able to cover all of his family's expenses especially because of the special needs of his autistic son [redacted] Although the documentation submitted shows that [redacted] has autism, counsel failed to submit documentation to show that suitable medical care for [redacted] would be prohibitively expensive or unavailable in Montenegro. There is no documentation to demonstrate that his condition prohibits him from moving to Montenegro. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Counsel asserts that Mr. [redacted] cannot be separated from Mrs. [redacted] because his wife takes care of [redacted] while he works. No documentation from a treating physician, therapist, or case worker indicates the extent to which Mrs. [redacted] cares for her son's needs or that separation from her would lead Mr. [redacted] suffer extreme hardship. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of hardship experienced by the families of most individuals who are deported.

In this case, though the applicant's qualifying relative will endure hardship if he remains in the United States separated from the applicant or if he relocates to Montenegro with her to avoid separation, their situation, based on the documentation in the record, does not rise to the level of extreme hardship. The AAO therefore

finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.