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

U.S. Citizenship and Immigration Services

H5

[redacted]

DATE: DEC 09 2011 OFFICE: NEW YORK, NY FILE: [redacted]

IN RE: APPLICANT: [redacted]

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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York, and was subsequently appealed to the Administrative Appeals Office (AAO). The appeal was dismissed, and the application is now before the AAO on a motion to reconsider. The motion will be granted, but the underlying application remains denied.

The applicant is a native and citizen of Guyana who has resided in the United States since November 27, 2001, when he presented counterfeit documents, including a Guyanese passport as well as a Canadian certificate of citizenship which did not belong to him in an attempt to gain admission into the United States. He 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 attempted to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. Citizen spouse and child.

The District Director concluded that the applicant failed to establish his qualifying relative would experience extreme hardship given the applicant's inadmissibility and denied the application accordingly. *See Decision of District Director* dated April 23, 2009. The Chief, Administrative Appeals Office subsequently found the record failed to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility and dismissed the appeal accordingly. *See Decision of AAO,* November 18, 2010.

For the motion to reconsider, counsel for the applicant submits a brief in support of the motion. Therein, counsel states the applicant does not contest inadmissibility under section 212(a)(6)(C)(i) of the Act. *Brief in support of motion to reconsider,* December 16, 2010. Counsel further explains although the applicant is inadmissible, the AAO "erred in its assertion that the applicant failed to establish that the bar to his admission would result in extreme hardship for his spouse." *Id.* Counsel cites the "violent conditions in Guyana," the consequent safety issues for the child and the applicant's spouse given relocation, as well as the spouse's concern over the child as relevant issues. *Id.* Furthermore, counsel states the spouse's ties to the United States, and relative lack of ties in Guyana, as well as the spouse's salary as a registered nurse in the United States are all factors which lead to a finding of extreme hardship. *Id.*

The record includes, but is not limited to, counsel's briefs; an affidavit and statement from the applicant's wife; medical and insurance documents for the applicant, his wife, and daughter; tax documents, bank statements, utility bills, and household bills; articles on crime and violence in Guyana; and documents from the applicant's removal proceedings. 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:

(1) The [Secretary] may, in the discretion of the [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 [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.

In the present case, the record reflects that on November 27, 2001 the applicant attempted to enter the United States by presenting a counterfeit Guyanese passport and a counterfeit Canadian citizenship card in the name of [redacted]." Immigration officials discovered the documents were counterfeit, and later paroled him into the United States after a credible fear interview. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation, a finding which the applicant does not contest. The applicant's qualifying relative is his U.S. Citizen spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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, including family separation, in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel for the applicant asserts that the AAO erred in not considering direct hardship to the child because "according to the holding in the *Matter of Ige*, that addresses the separation of minor children from both parents apply for suspension of deportation, the critical issues is whether a child would suffer extreme hardship if she accompanied her parent abroad." *Brief in support of motion to reopen,* December 16, 2009. Counsel fails to recognize that in *Ige,* the Executive Office for Immigration Review was evaluating extreme hardship for a suspension of deportation case, which requires a finding of "extreme hardship to himself or to his United States citizen or lawful permanent resident spouse, *child*, or parent." *Matter of Ige,* 20 I&N Dec. 880, 881 (BIA 1996) (emphasis added). Whereas in a waiver of inadmissibility under section 212(i) of the Act, a child is not included as a qualifying relative; a waiver is available only if the applicant can show "extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien." INA §212(i), 8 U.S.C. §1182(i). Counsel then asserts in the motion to reopen that the AAO "skids over

the impact that a negative determination could have on the child, which could have a rippling effect on the mother's state of mind." *Brief in support of motion to reopen,* December 16, 2010. It is again noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

Counsel then contends the AAO "erred in [its] analysis of hardship in that he failed to take into consideration the nature of the family relationship." *Brief in support of motion to reopen,* December 16, 2010. This family relationship, counsel explains, is one where "the applicant's daughter is just 3 years old. To go to Guyana would be a risk to her life and safety; however, to lose her daddy and remain in the U.S. would constitute emotional abandonment that would scar her forever." *Id.* This assertion of counsel remains unsupported by evidence, and furthermore is not supported by the spouse's own affidavit. *See affidavit of applicant's spouse,* December 11, 2007. Even if the spouse corroborated counsel's assertions in her own affidavit, little weight can be afforded the spouse's assertions in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Again, although safety issues in Guyana are acknowledged, the evidence of record does not establish that the applicant's family would be subjected to violence.

Counsel moreover asserts the spouse's income weighs in favor of a finding of extreme hardship in this case, as her relative wealth "further proves up the applicant's case that his family could be targeted by the criminal elements in Guyana, that have been documented on the record." *Brief in support of motion to reconsider,* December 16, 2010. The evidence of record, which was not supplemented on this motion to reopen, again does not establish the spouse specifically would be targeted in Guyana. In fact, the U.S. Department of State indicates: "Past demonstrations have not been directed at U.S. citizens, and violence against U.S. citizens in general is not common." *Guyana, Country Specific Information, U.S. Department of State,* October 6, 2011.

The AAO again acknowledges the applicant's spouse would experience some difficulties given relocation to Guyana given her documented appendicitis, diagnosed in 2007, the child's ear infections, separation from her other family, as well as the change of lifestyle. *See report from* [redacted] August 20, 2007, *see also report from* [redacted] March 28, 2009. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence of record is insufficient to establish, however, that the applicant's wife suffers from such a condition. The record contains copies of medical records containing

medical terminology and abbreviations that are not easily understood, and laboratory results. The documents submitted were prepared for review by medical professionals and do not contain a clear explanation of the current medical condition of the applicant's spouse or daughter. 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, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. Moreover, there is no evidence of record to show the applicant's spouse, given that she was born in Guyana and became a U.S. Citizen in 1999, would be unable to adapt to life in Guyana, or would be unable to find employment in Guyana as a U.S. trained registered nurse. The AAO acknowledges the spouse would experience some difficulties upon relocation to Guyana. However, given the evidence of record, the AAO cannot conclude the applicant's spouse would suffer difficulties amounting to extreme hardship upon relocation.

Again, the AAO notes the spouse would suffer some difficulties upon separation from the applicant. The applicant's spouse explains: "it would be a tremendous hardship for me and our daughter if we were deprived of [redacted] presence, based on health reasons, economic reasons, and based on the psychological well-being of our daughter." *Affidavit of applicant's spouse,* December 11, 2007. Although the applicant has submitted evidence of his spouse's income and household expenses, that evidence does not show the spouse's expenses, exceed her income, which, according to the spouse's 2007 U.S. Federal Income Tax return is $56,301 a year. *See 2007 U.S. Federal Income Tax Return.* Moreover, there is no evidence of record to show how much child care would cost, given the applicant's absence. As discussed *supra,* there is also insufficient evidence to show that, although the spouse and the child have had some medical conditions, that these medical conditions are sufficiently severe, require ongoing treatment, or assistance from the applicant. The AAO acknowledges the spouse would experience some hardship due to separation from the applicant; however, given the evidence of record, the AAO cannot conclude this hardship exceeds the hardship normally experienced by relatives of inadmissible aliens and constitutes extreme hardship.

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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his 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 determining whether the applicant 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 remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, although the motion to reconsider is granted, the appeal is dismissed, and the application remains denied.

ORDER: The motion to reconsider is granted, but the underlying application remains denied.