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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

#5

DATE: OCT 14 2011 OFFICE: SANTO DOMINGO 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 PETITIONER:

[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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santo Domingo, the Dominican Republic, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Saint Lucia. She 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 and seeking to procure visas 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 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 relocate to the United States with her U.S. Citizen spouse and lawful permanent resident children.

The Field Office Director concluded that the record failed to establish the adverse effect on the qualifying relative is greater than one would expect from a prolonged absence of a loved one due to inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated May 7, 2009.

On appeal, counsel for the applicant explains the applicant does not concede that she misrepresented herself, as her use of multiple names reflects her father's, mother's, and spouse's last names. *Id.* Moreover, counsel states the Field Office Director erred in not finding extreme hardship to the applicant's spouse, as he experiences financial, physical, and emotional hardship. *Id.*

The record includes, but is not limited to, a brief in support of appeal, baptismal, birth, marriage, divorce, and citizenship certificates, affidavits and letters from the applicant's spouse, an affidavit from the spouse's employer, a letter from the applicant's son, and photographs. 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.

Counsel asserts the applicant presented names reflecting her mother's, father's, and spouse's last names without intending to misrepresent her identity; however, this is not her only misrepresentation. The record reflects that in applying for non-immigrant visas as well as this immigrant visa, she not only used different names, she attempted to obtain multiple non-immigrant visas at once, she misrepresented her date of birth, and when asked she failed to disclose her previous visas and visits to the United States. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for both procuring and seeking to procure visas to the United States through fraud or misrepresentation. The applicant's qualifying relative is her 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 in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is 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.

As a preliminary matter, counsel for the applicant asserts the "Office of Administrative Appeals has the discretion to treat the appeal as a motion to reopen or reconsider within forty-five (45) days of the receipt of the appeal. See 8 C.F.R. §103.3(a)(2)(iii)." *Brief in support of appeal,* September 25, 2009. This assertion is incorrect. The regulation states the "reviewing official shall decide whether or not favorable action is warranted. Within 45 days of receipt of the appeal, the reviewing official may treat the appeal as a motion to reopen or reconsider and take favorable action." 8 C.F.R. §103.3(a)(2)(iii). The Field Office Director made the unfavorable decision being appealed, and as such the Field Office Director is the "reviewing official" referenced in this regulation. *See* 8 C.F.R. §103.2(a)(2)(ii) ("The official who made the unfavorable decision being appealed shall review the appeal unless the affected party moves to a new jurisdiction.") The record reflects the Field Office Director decided favorable action was not warranted, and thus forwarded the appeal to the AAO pursuant to 8 C.F.R. §103.3(a)(2)(iv). Moreover, contrary to

counsel's assertions, the AAO does not have the discretion to treat an appeal as a motion to reopen or reconsider. Only the official who made the latest decision in a proceeding has jurisdiction over a motion to reopen or reconsider. 8 C.F.R §103.5(a)(1)(ii). In this case, that official is the Field Office Director, not the AAO.

Counsel asserts the Field Office Director's decision is "based on erroneous conclusions of law and statements of fact." *Brief in support of appeal,* September 25, 2009. Counsel explains the Field Office Director failed to consider the "applicant's ties to the United States" as well as the spouse's ties to the United States and lack thereof in St. Lucia. *Id.* In support, the applicant's spouse states: "I am very close to my sister who is a lawful permanent United States citizen living in St. Croix. I also have four (4) children that live here in the United States. I don't have any close family ties to St. Lucia." *Declaration of applicant's spouse,* September 25, 2009. As for the applicant's ties to the United States, the applicant's spouse claims "Both her son and daughter are now lawful permanent United States Citizens. She also has two sisters that are lawful permanent United States citizens living in the United States Virgin Islands."[1] *Id.*

The applicant's spouse asserts he suffers from financial hardship, and is concerned about relocating to St. Lucia. He explains: "I am 55 years of age and had to work two (2) jobs to maintain a household in St. Croix and a household in St. Lucia. One job has since made me a fulltime employee such that I could no longer work two (2) jobs. I now work eleven (11) hours per day, six (6) days a week managing a hardware store." *Declaration of applicant's spouse,* September 25, 2009. The employer confirms the spouse "now works as a full time employee at a rate of approximately 55 hours per week at $13.00 per hour." *Affidavit of* [redacted] September 25, 2009. In another letter, the applicant's spouse explains that the cost of a plane ticket between St. Croix and St. Lucia and the cost of living is too high. *Letter from applicant's spouse,* undated. The applicant's spouse further states: "It would be difficult for me to relocate to St. Lucia as I am not guaranteed employment in St. Lucia and am currently the sole provider for my family, including my wife and her two (2) children." *Declaration of applicant's spouse,* September 25, 2009. Additionally, he explains [redacted] and I decided to make our home in St. Croix because St. Croix has a better standard of living, better schools for [redacted] son who is now in high school, and more job opportunities for [redacted] in St. Croix as the company she previously worked for in St. Lucia has closed down." *Id.* He adds, "I am currently 55 years of age and am concerned about relocating to a country with an unsuitable healthcare system, such as St. Lucia, at a time where I may need to rely on the availability of appropriate healthcare services." *Id.*

Furthermore, the applicant's spouse contends he suffers from hardship because of his stepson, who now lives with him. He explains: "I am currently the primary caregiver of [redacted] fourteen (14) year old son, [redacted] My daily responsibility with regards to [redacted] includes making his meals, getting him ready for school in the morning, driving him to do errands or participate in school activities and paying for his daily expenses. Taking care of my stepson is very difficult without the help of my wife as I work all day long and am usually exhausted when I get home in the

[1] Service records reflect the applicant's two children are lawful permanent residents, not U.S. Citizens. No evidence was submitted on the immigration status of the applicant's two sisters.

evening." *Id.* This responsibility is made more difficult, the spouse adds, because "He has become introverted and his grades are poor because he is struggling with the loss of his mother." *Id.* In a handwritten letter, the applicant's son confirms he cannot concentrate on his schoolwork as he is thinking about how his mother cannot come live with them. *Letter from* [redacted] undated.

Additionally, the applicant's spouse contends her misrepresentations "have now placed our family in sadness and extreme difficulties, financially and emotionally." *Letter from applicant's spouse,* November 1, 2008. In another letter, the applicant's spouse worries about what would happen should he become sick, and the applicant was not there to take care of him. *Letter from applicant's spouse,* undated. He explains "I still have to cook for my self and step son, wash, iron, and the whole nine yards, clean, etc." *Id.*

The applicant's assertions of financial hardship are not supported by the record. The applicant's spouse claims he supports not only his household in St. Croix, which holds himself and his stepson, but also the applicant's household in St. Lucia. *Declaration of applicant's spouse,* September 25, 2009. The applicant's spouse's employer confirms he makes $13.00 per hour and works 55 hours per week.[2] However, despite this evidence on the spouse's income, the record does not contain sufficient evidence of the spouse's or the applicant's household expenses to support assertions of financial hardship. Additionally, although the applicant's spouse submits the applicant is not currently employed because "the company she previously worked for in St. Lucia has closed down," it is noted that on her DS-230 Application for Immigrant Visa and Alien Registration form, the applicant indicated she was self employed and working as a vendor. *See declaration of applicant's spouse,* September 25, 2009, *see also applicant's DS-230 form.* Nevertheless, the applicant further fails to provide any evidence regarding her own employment and earnings or lack thereof, and whether she would be able to contribute financially if she could join her spouse in the United States. Without details of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

The applicant's spouse further asserts he suffers hardship because he is responsible for caring for his stepson, the applicant's son, that the school system in St. Croix is superior to that in St. Lucia, and the stepson has done poorly in school without his mother. *Declaration of applicant's spouse,* September 25, 2009. There is nothing indicating the stepson cannot return to St. Lucia to live with the applicant, there is no supporting evidence to substantiate the spouse's claim that the schools in St. Croix are better than those in St. Lucia, and that the stepson is faring poorly in school. Counsel asserts "it is not typical to raise a child that you barely know when the mother who was always the primary caregiver lives miles away while working eleven (11) hours a day, six (6) days per week to support two (2) households." *Brief in support of appeal,* September 25, 2009. Although counsel's and the applicant's spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See

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[2] It is noted his income is more than sufficient to meet 125 percent of the minimum income requirement for both households. *See I-864, Poverty Guidelines, www.uscis.gov,* March 1, 2011.

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). Moreover, even were there sufficient evidence substantiating these assertions, the applicant would have to show these factors constitute a hardship for the applicant's spouse, not the stepson. This is not apparent from the record.

The applicant then explains the emotional difficulties related to separation: that the separation is causing "family sadness," the applicant would not be able to care for her spouse in case of a future illness, and that he is finding it difficult to perform household chores for himself and his stepson. *See letter from applicant's spouse,* November 1, 2008, *see also declaration of applicant's spouse,* September 25, 2009. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant remains in St. Lucia without his spouse.

There is also insufficient evidence to show extreme hardship to the applicant's spouse upon relocation to St. Lucia. The spouse posits he is not "guaranteed employment in St. Lucia." *Declaration of applicant's spouse,* September 25, 2009. Again, even if this assertion were supported by evidence on his prospective employment in St. Lucia, the assertion itself does not denote a substantial change in financial circumstances. The AAO acknowledges the applicant and her spouse have family ties in the United States. However, nothing in the record establishes the applicant's spouse would suffer extreme hardship above and beyond the common results of inadmissibility upon relocation to St. Lucia.

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 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 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, the appeal will be dismissed.

ORDER: The appeal is dismissed.