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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

[redacted]

DATE: AUG 0 9 2012 OFFICE: NEW YORK FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of China who 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), due to her use of fraud or material misrepresentation in an attempt to procure admission into the United States. The applicant seeks a waiver of inadmissibility (Form I-601) under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse.

In a decision dated September 3, 2010, the District Director concluded that the applicant did not meet her burden of proof to illustrate that her U.S. citizen spouse would suffer extreme hardship and the application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility, but states that the hardship that would result to the applicant's U.S. citizen spouse is extreme.

In support of the waiver application, the record includes, but is not limited to legal arguments by counsel for the applicant, a statement from the applicant, statements from the applicant's spouse, financial documentation for the applicant and his spouse, biographical information for the applicant and his spouse, biographical information for the applicant's family in the United States, a psychiatric evaluation of the applicant's spouse, medical records for the applicant's spouse, country conditions information for China, and documentation concerning the applicant's immigration history, including her applications for asylum before the Immigration Judge.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible to the United States under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), which is a permanent grounds of inadmissibility. 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.
>
> ...

The record makes clear that the applicant is inadmissible under section 212(a)(6)(C) of the Act for the use of fraud or material misrepresentation in an attempt to procure admission into the United States. On July 17, 1999, the applicant presented a photo-substituted Chinese passport and U.S. visa issued to another individual, in an attempt to gain admission to the United States. The

applicant was referred to secondary inspection where in a sworn statement, she admitted her true identity. The applicant expressed a fear of persecution in China and was paroled into the United States for removal proceedings. The applicant's application for asylum was ultimately denied by the Immigration Judge and her appeal was dismissed by the Board of Immigration Appeals. The applicant filed a timely motion to reopen, which was granted, and the applicant's case was remanded to the Immigration Judge for consideration of the applicant's new application for asylum on a different basis than her original claim. The applicant is presently in removal proceedings; however, USCIS retains jurisdiction over the applicant's application for adjustment of status, and as a result, the corresponding application for a waiver of inadmissibility pursuant to 8 CFR § 245.2(a)(1). The applicant does not contest her inadmissibility on appeal.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides a waiver for section 212(a)(6)(C) of the Act. Section 212(i) of the Act states 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 waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse or parent. The applicant has a U.S. citizen spouse as well as U.S. lawful permanent resident parents; however, on appeal, the applicant has only presented documentation in support of extreme hardship to her U.S. citizen spouse. Hardship to the applicant is not considered in section 212(i) waiver proceedings unless it is shown to cause hardship to a qualifying relative. 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 deportation, 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, 885 (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.

On appeal, counsel for the applicant states that the applicant's spouse would "suffer extreme emotional, financial and physical hardship" if his spouse was not granted a waiver of inadmissibility. In regards to the physical hardship, counsel states that the applicant's spouse

suffers from "diabetes, arthritis and major depression." Counsel states that the applicant's spouse must follow a strict regimen and that the applicant's "physical presence in the United States is instrumental in the success" of her spouse's medical care. Medical records establish that the applicant's spouse suffers from diabetes and hyperlipidemia, and has been prescribed medication for other ailments. Some of the records; however, are undated and illegible. The records consist of laboratory results, receipts, and prescriptions. 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 on the record; however, is insufficient to establish that the applicant's spouse suffers from such a condition. The record contains copies of medical records containing medical terminology and abbreviations that are not easily understood, were prepared for review by medical professionals, or are otherwise illegible or indiscernible and do not contain a clear explanation of the current medical condition of the applicant's spouse. A letter from [redacted] dated March 30, 2010 indicates that the applicant's spouse was "evaluated at the Bellevue Hospital Center Emergency Department" from March 29, 2010 to March 30, 2010, where upon release he was given instructions to follow a low fat, low cholesterol diet. 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. The record fails to establish that the applicant's spouse is instrumental in the success of her spouse's medical care. Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them 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).

Moreover, the applicant's spouse was evaluated by [redacted] a psychiatrist, who diagnosed the applicant's spouse with Major Depressive Disorder based on the following symptoms reported by the applicant's spouse: "depressed mood, poor sleep, high anxiety, poor appetite, feelings of helplessness, difficulty concentrating and passive suicidal thoughts." [redacted] states that if the applicant's spouse remains untreated, his condition "may potentially progress and deteriorate." He also predicts that the applicant's physical condition would deteriorate if his mental condition deteriorates. In his report, [redacted] also states that the applicant's spouse's marriage will likely be destroyed if he and the applicant are separated. [redacted] prescribed the applicant various medications and the record does not establish whether those medications were helpful in treating or controlling the applicant's spouse's symptoms. Counsel also states that the applicant's spouse would face financial hardship if he would have to increase his expenses with telephone calls, mail, and travel to China. Based on the financial records submitted, it is not

possible to conclude that maintaining telephone contact with the applicant and traveling to China would be a financial burden for the applicant's spouse. Although the AAO notes the applicant's spouse's difficult situation and recognizes that the applicant's spouse would endure hardship as a result of long-term separation from the applicant, the evidence in the record does not establish that the hardships he would face, considered in the aggregate, rise to the level of "extreme."

Counsel states that the applicant's spouse would also suffer extreme hardship if he were to relocate to China to reside with the applicant. The applicant's spouse is a native of China who became a naturalized U.S. citizen in 1999. Counsel states that the applicant's spouse's medical condition "is fragile and any relocation to China would result in extreme hardship." The record illustrates that the applicant's spouse suffers from diabetes and hyperlipidemia and has been recommended a low fat, low cholesterol diet. The record also indicates that the applicant's spouse has been prescribed various medications. There is no support in the record; however, for the statement that the applicant's spouse's medical condition is fragile or that it is not treatable in China. As stated above, 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 on the record is insufficient to establish the severity of the applicant's spouse's condition or that the condition is not treatable in China. Again, 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 at 165. The record establishes that the applicant's spouse has had a long residence in the United States and that he has steady employment in this country as a chef. But, the record also establishes that the applicant's spouse is a native of China and speaks Chinese. There is no support in the record that the applicant's spouse would be unable to obtain employment in China. The AAO notes the country conditions information in the file regarding China and the applicant's pending application for asylum based on her Christian faith. The applicant, however, has failed to identify how her spouse would specifically be impacted by these conditions. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's spouse relocate to China, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Although the applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families; in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in

section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases.

Considered in the aggregate, the hardship to the applicant's spouse does not rise to the level of extreme beyond the common results of removal. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez*, 96 F.3d at 392 (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Matter of Pilch*, 21 I&N Dec. at 631. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required under section 212(i) of the Act. 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 an 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.