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: JUN 2 5 2012 OFFICE: OAKLAND PARK, FL [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 with the field office or service center that originally decided your case by filing a 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,

Ellen C. Johnson

Perry Rhew, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Argentina 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), for attempting to obtain a benefit under the Act through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse.

On February 8, 2010, the Field Office Director concluded that the negative aspects of the applicant's case outweighed the positive, and denied the application as a matter of discretion.

On appeal, counsel for the applicant states that the applicant should not be inadmissible to the United States, and if he is determined to be inadmissible, that he has established that his spouse would suffer from extreme hardship if he is not admitted as a lawful permanent resident.

In support of the waiver application, the record includes, but is not limited to legal arguments by counsel for the applicant, a psychological report concerning the applicant's spouse, medical records for the applicant's spouse, biographical information for the applicant and his spouse, biographical information for the applicant's son, photographs of the applicant's family in the United States, a statement from the applicant's spouse, a statement from the applicant, documentation of the applicant's employment, documentation of the applicant's spouse's education and employment, documentation of health insurance for the applicant's spouse, country conditions information for Argentina and Colombia, and documentation of the applicant's criminal and immigration history.

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 Field Office Director determined that the applicant was inadmissible under section 212(a)(6)(C) of the Act, which 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.
>
> ...

On appeal, counsel for the applicant states that the applicant did not make a material misrepresentation in order to obtain an immigration benefit, but rather it was the "applicant's intention to procure a state issued driver's license." The applicant states that he was not aware that he was doing anything illegal or fraudulent when renewing his driver's license in 2006. Neither

the applicant nor counsel, however, provide any explanation for the misrepresentations on the Form I-589, Application for Asylum and for Withholding of Removal signed and dated by the applicant on September 20, 2006. Regardless of the applicant's intention to obtain a driver's license renewal, the record indicates that he made material misrepresentations on an application to obtain a benefit under the Act, namely asylum.

A misrepresentation is generally material only if by making it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, which is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys*, 485 U.S. at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or

2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

The record indicates that the applicant was admitted to the United States on March 12, 2001 pursuant to the pilot visa waiver program. On his asylum application, however, the applicant stated that he was admitted to the United States in B2 status on April 16, 2005 with permission to remain in the United States through October 15, 2005. The applicant submitted his asylum application on September 28, 2006. The applicant's misrepresentations on his asylum application pertaining to his date-of-admission to the United States were relevant to his eligibility for asylum, and thus were material. Additionally, the applicant has not provided any evidence to illustrate that the signature of his asylum application was not his own or that his misrepresentation was not willful. The burden of proof remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Rivero-Diaz,* 12 I&N Dec. 475 (BIA 1967); *Matter of M-*, 3 I&N Dec. 777 (BIA 1949). As such, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having made a willful misrepresentation of a material fact to obtain a benefit under the Act.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section, in pertinent part, 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 a qualifying relative, which in this case is the applicant's U.S. citizen spouse. Congress did not include hardship to the applicant's child as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse. 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 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).

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.

Counsel for the applicant states that the applicant's spouse would suffer financial and emotional hardship if she were to be separated from the applicant. In particular, counsel states that the applicant's spouse has "unusual financial dependency on her husband upon the birth of their first child." The record, however, does not illustrate that the applicant's spouse is dependent on the applicant financially. No financial or employment information was submitted concerning the applicant or the applicant's spouse on appeal. The record contains the birth certificate for the applicant and his spouse's child, who was born on February 8, 2010. In her statement in the record; however, the applicant's spouse stated that she planned to return to work after the birth of her child. The record indicates that the applicant's spouse had fulltime employment as a Senior Billing and Invoicing Specialist with Rosemont Farms Corporation, earning $31,500.00 per year. The record indicates that the applicant was employed as a Trainee Technician at Equip Co. USA, Inc. earning $500.00 per week. The record does not contain any evidence of the couple's expenses or any indication that the applicant's spouse is financially dependent on the applicant. 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). Without more information regarding the applicant's spouse's expenses and evidence of her reliance on the applicant's income, it is not possible to determine the extent of the financial hardship that she would suffer in the applicant's absence.

A psychological assessment by Dr. [redacted] Ph.D., [redacted] Psychotherapy Center of Coral Springs, states that the applicant's spouse fears for the "safety and

integrity of their marriage, and the burdens that will fall upon" her if she were separated from the applicant. The applicant's spouse states that if she were separated from the applicant, her son would be deprived of the love and care of his father. She also states that the applicant is her best friend and soul mate. Dr. [redacted] states that the applicant's spouse reported to him that she suffered from "a marked loss of interest in most activities, anxieties, sleep disturbances, depression, guilt feelings, decreased energy, marked restriction of daily activities, marked difficulties in social functioning, short term memory deficits, trouble concentrating" as a result of her "traumatic experience and prolonged stress." Dr. [redacted] diagnosed the applicant's spouse with Acute Stress Disorder, Major Depression Disorder, and Generalized Anxiety Disorder. The AAO respects the opinion of mental health professionals, but in this case there is no supporting evidence to indicate that the applicant's spouse's mental health condition has affected her ability to function and carry out her daily activities. Although the AAO notes the applicant's spouse's difficult situation and recognizes that the applicant's spouse will endure hardship as a result of long-term separation from the applicant, the record does not establish that the hardships she would face, considered in the aggregate, rise to the level of "extreme" beyond those hardships normally experienced by individuals faced with separation from their spouse due to immigration inadmissibility.

We must also consider whether the applicant's U.S. citizen spouse would suffer extreme hardship should she relocate to abroad to reside with the applicant. The applicant's spouse is a native of Colombia and the applicant is a native of Argentina. Counsel for the applicant states that the applicant's spouse would suffer extreme hardship if she were to relocate to either country. In particular, counsel states that the applicant's spouse would not be able to obtain the necessary medical care that she requires in Argentina or Colombia. The medical records for the applicant indicate that she had a cyst removed from her ovary prior to the birth of her son. There is no indication in the record, however, that the applicant's spouse requires ongoing medical attention. In his psychological assessment of the applicant's spouse, Dr. [redacted], who is not a medical doctor, states that the applicant's spouse has had ulcers since age 16 that have been exacerbated by the applicant's immigration situation. There is no support for that statement in the record from a medical doctor. Additionally, Dr. [redacted] states that the applicant's spouse's "medical needs are many" and she "will not receive the necessary medical treatment she needs in Argentina." Not only does the record not indicate that the applicant's spouse suffers from ulcers, gastritis, acid reflux, and panic attacks, but the record also lacks support for the statement that treatment for those conditions is unavailable in Colombia or Argentina. In fact, the Country Specific Information for Argentina prepared by the U.S. Department of State and submitted by the applicant into the record, states that "the public health system in Argentina provides emergency and non-emergency services free of charge to all, regardless of nationality or immigration status." The report states that the quality of care is below U.S. standards in public hospitals, but that "care in private hospitals in Buenos Aires is generally good." 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, however, that the applicant's spouse suffers from such a condition. The record contains copies of medical records that do not contain a clear explanation of the current medical condition of the applicant's spouse. 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.

Counsel for the applicant also states that the applicant's spouse would face gender discrimination in Argentina or Colombia that would prevent her from obtaining employment in those countries. Counsel also states that the applicant's spouse's skills are non-transferable to Argentina or Colombia. There is no support in the record for either of those statements. The U.S. Department of State Human Rights Report for Argentina, dated February 25, 2009, states that women encountered economic discrimination in Argentina, earning 5% less than men in Buenos Aires for equivalent full-time work. This statistic does not suggest that applicant's spouse would be unable to obtain employment or that she would suffer from financial hardship.

The applicant's spouse states that her mother and brother reside in the United States and counsel for the applicant states that these family ties should be taken into consideration, but there is no evidence in the record documenting the applicant's spouse's family ties in the United States. 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)). Again, although the AAO notes the applicant's spouse's difficult situation, the record does not establish that the hardships that she would face upon relocation to Cuba would rise to the level of "extreme" as contemplated by statute and case law.

The applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, but 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.

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 qualifying relative 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 he 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.