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

U.S. Citizenship and Immigration Services

[redacted]

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Date: NOV 15 2012 Office: NAIROBI, KENYA FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Nairobi, Kenya. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Kenya who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact to procure an immigration benefit. The applicant is the son of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside in the United States with his mother.

In a decision, dated January 31, 2011, the field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends that the applicant's mother is and will continue to suffer extreme hardship as a result of the applicant's inadmissibility.

The record indicates that in 2003, when applying for a nonimmigrant visitor's visa, the applicant concealed the fact that he had a mother who was a lawful permanent resident living in the United States. On November 10, 2003, the applicant attempted to enter the United States at the Dulles Airport Port of Entry. After being questioned by an immigration officer, the applicant stated that he was coming to the United States to see his mother when his nonimmigrant visa noted that he was coming to the United States for one month to visit with his aunt. The applicant stated, at the time of his attempted entry, that his mother told him to lie about her living in the United States. The applicant then withdrew his application for admission and was returned to Kenya in lieu of removal. Thus, the applicant misrepresented a material fact when he applied for a nonimmigrant visa and failed to disclose that he had a permanent resident citizen mother. The applicant does not contest this finding of inadmissibility on appeal.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—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, in pertinent part:

> (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 includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's mother is the only qualifying relative in this case. 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).

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. *Salcido-Salcido v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 of hardship includes: a statement from the applicant, a statement from the applicant's mother, a statement from the applicant's stepfather, a psychological evaluation, a death certificate for the applicant's grandmother, and financial documentation.

The applicant's mother is claiming extreme emotional and physical hardship as a result of separation from her son and extreme emotional, financial, and medical hardship as a result of relocating to Kenya.

The record indicates that the applicant and his mother have been separated since 2001 when his mother immigrated to the United States, that the applicant's grandmother helped raise him until she died in 2003, and that now he lives with his aunt. The record indicates that the applicant's father has never been a part of his life. The record shows, through Western Union receipts, that the applicant's mother periodically sends money to the applicant in Kenya to help support his needs.

The record establishes that the applicant's mother is suffering stress, headaches, and anxiety as a result of being separated from the applicant. However, the record also states that the applicant's mother is still able to function at school and work. There is no indication that her conditions are beyond those experienced by others in her position. Thus, we find that separation from the applicant is not an extreme hardship for the applicant's mother.

The applicant's mother claims that relocation to Kenya would be extreme hardship because she has no family ties other than the applicant in Kenya, she is married to a lawful resident of the United States, she owns a home in the United States, would not have medical insurance in Kenya, and would not be able to find employment as a nurse in Kenya. She states further that she is currently trying to become pregnant and has had two miscarriages requiring medical attention. She states that relocating to Kenya would mean she would have to give up on wanting to have another child and she

would also have to withdrawal from college, where she is working toward a Bachelor of Science degree in Nursing. The AAO finds that although the record establishes that the applicant's mother has significant ties to the United States, relocating to Kenya would not be an extreme hardship. The record does support that the applicant's mother has an auto loan in the United States, which is scheduled to be paid in full by December 2011, but the record does not include documentation to support the applicant's mother's statements about owning a home in the United States. An employment letter for the applicant's mother states that the applicant's mother is a Licensed Practical Nurse, averages 56 hours per biweekly pay cycle, and earns $24.09 per hour. The record also indicates that in 2009 the applicant's mother married a Kenyan born man who is a civil engineer by profession. The record states further that the applicant is currently living with his aunt in Kenya. The record also indicates that the applicant's mother has nine siblings, 4 siblings living in the United States, but at least one brother and one sister living in Kenya. The record does not indicate where the other siblings are living. Thus, the record does not support the statement that the applicant's mother has no family ties to Kenya. The record also fails to show that the applicant's mother would not be able to find employment as a licensed practical nurse, attend college for nursing, or obtain medical care in Kenya. The record contains no documentation regarding country conditions in Kenya, but does indicate that the applicant's mother also has a teaching certificate from Kenya and for ten years prior to coming to the United States owned and managed a successful kindergarten school. Thus, we find that relocating to Kenya would not be an extreme hardship for the applicant's mother.

The assertions of the applicant's spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions cannot be given great weight. *See Matter of Kwan*, 14 I&N Dec. 175, 177 (BIA 1972) ("Information contained 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 evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Therefore, we find that the applicant has failed to establish that his mother would suffer extreme hardship as a result of his inadmissibility.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely 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.