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

[redacted]

DATE: OCT 18 2012 OFFICE: NEW YORK FILE: [redacted]
(relates)

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,

Ellen C. Johnson

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 Bangladesh 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 his use of fraud or material misrepresentation in an attempt to procure a benefit under the Act. 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 his U.S. citizen spouse.

In a decision dated February 11, 2011, the District Director concluded that the applicant did not illustrate that his 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, statements from the applicant's spouse, biographical information for the applicant and his spouse, a psychological report concerning the applicant's spouse, limited tax transcripts, documentation of property ownership and mortgage statements, country conditions information concerning Bangladesh, and documentation concerning the applicant's 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 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 a benefit under the Act. The applicant, on three occasions has made material misrepresentations in attempts to procure immigration benefits under the Act. The applicant submitted Forms I-589, I-765, and I-485 in the name of '[redacted]' with the date of birth of March 7, 1964, and stated that he entered the

United States on October 25, 1992 without a visa. The record illustrates that the applicant's currently claimed identity, date of birth, and date and manner of entry are different than noted on those applications. The AAO also notes that the applicant stated on his Form I-485, submitted on April 28, 2001 in relation to a diversity visa application, that he was married to an individual different from his present spouse, and that he had one child, where he now states that he has no children.[1] The AAO finds that applicant is inadmissible under section 212(a)(6)(C) of the Act. The applicant does not contest his 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. 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

[1] The record contains numerous documents including a passport, school documents, employment verification and a marriage certificate to a different individual from the current petitioner/spouse, in the name which the applicant used to apply for asylum and the diversity visa. It appears that he used this identity for a number of years. The applicant's identity and possible prior marriage should be thoroughly examined prior to any further proceedings.

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 evidence, in the aggregate, demonstrates that the applicant's U.S. citizen spouse would suffer extreme hardship if the waiver were not granted. In regards to the hardship that the applicant's spouse would suffer if she were to be separated from

the applicant, counsel states that the applicant's spouse would suffer financial and psychological hardship. In regards to financial hardship, the applicant's spouse states that she owns two homes and that she would rely on the applicant's income to keep those homes "should anything ever happen." The applicant's spouse notes that she rents rooms in each of the homes, but does not provide any documentary evidence to illustrate her income from those rentals. The record contains limited evidence of the applicant and his spouse's income, assets, and expenses. The tax transcripts for the applicant and his spouse are from 2006 and 2007 and the record does not contain current documentation of their cumulative reported income. The AAO notes that the record contains tax returns from 2009 from the applicant's affidavit of support (Form I-684) co-sponsor, and no explanation is provided why more current financial information was not provided for the applicant and his spouse. The record contains a letter dated December 18, 2009 from [redacted] stating that the applicant reports his income to be approximately $675.00 per week. The applicant's spouse states that she is a self-employed as a seamstress and babysitter. On the affidavit of support (Form I-864), the applicant's spouse reported her annual income to be $5,215.00, although she indicated on the same form that her income from 2006 to 2008 ranged from $28,610.00 to $13,418.00. The AAO is not able to determine the degree of financial hardship that the applicant's spouse would suffer, if any, in the applicant's absence based on this limited information. Although 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 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).

Counsel for the applicant also states that as a result of her concerns about the applicant's immigration status, the applicant's spouse is suffering from major depressive disorder. The applicant's spouse states that she becomes "apprehensive and anxious" when she thinks about her husband's immigration status. She also states that she is "especially anxious" because she and the applicant have been undergoing in-vitro fertilization treatments unsuccessfully for five years. She states that she is grateful to have medical insurance to cover the treatment. There is no documentation in the record, however, of the applicant's spouse's infertility, in-vitro fertilization treatments or medical insurance. The applicant's spouse also states that she would fear for her husband's health, safety, and financial well-being if he were to return to Bangladesh. In regards to the applicant's spouse's psychological well-being, the record contains an affidavit prepared by [redacted] states that she interviewed the applicant's spouse on one occasion, based on a referral from the applicant's attorney. [redacted] states that the applicant's spouse was born on July 9, 1960, however, that information is not correct according to the record. That information appears to be based on the applicant's spouse's affidavit in the record, which

also contains her incorrect date of birth. [redacted] also states that the applicant's spouse's mood "was clearly very depressed and anxious," in particular concerning the applicant's spouse's feelings concerning her efforts to conceive and her husband's immigration status. The applicant's spouse reported her symptoms to be "depressed mood, crying spells, and disturbed sleep." She also reported decreased appetite and libido. The AAO recognizes that the applicant's spouse is suffering from emotional hardship as a result of her infertility and concerns about the applicant's inadmissibility, but this hardship does not rise to the level of extreme beyond what is normally experienced by individuals separated due to immigration violations. The evidence of record, when considered in the aggregate, does not indicate that the applicant's spouse will suffer from extreme hardship as a result of separation from the applicant.

The applicant's spouse also states that she would suffer extreme hardship is she were to relocate to her native Bangladesh. In particular, the applicant's spouse states that she would not be able to continue in-vitro fertilization treatments in Bangladesh as a result of lack of services in that country and the loss of her health insurance. Again, the record does not contain any documentation of the applicant's spouse's infertility, in vitro fertilization treatments, or health care coverage in the United States. Additionally, the record does not document the lack of infertility services in Bangladesh. Significant conditions of health, particularly when tied to 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. 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 does not contain any documentary evidence of the applicant's spouse's family ties in the United States or lack of those ties in her native Bangladesh. 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 AAO notes the extensive country conditions reports concerning Bangladesh, and concerning arsenic poisoning in particular. The record, however, does not illustrate that the applicant's spouse would suffer hardship because of those country 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 Bangladesh, 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.