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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: APR 0 2 2013 OFFICE: SAN FRANCISCO, CA [redacted]

IN RE: [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 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Francisco, California and the Administrative Appeals Office (AAO) sustained the applicant's subsequent appeal. The AAO then reopened the matter on motion, withdrew the prior decision and denied the application. 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 the Philippines 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 procuring admission to the United States through fraud or the willful misrepresentation of a material fact. The applicant is married to a U.S. citizen. She 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.

The Field Office Director concluded that the applicant failed to establish that a bar to her admission to the United States would result in an "extreme hardship" to the qualifying relative and denied the application accordingly. *See Decision of the Field Office Director,* dated September 25, 2007.

On appeal, counsel asserted that United States Citizenship and Immigration Service (USCIS) had abused its discretion in finding that the applicant's spouse would not suffer extreme hardship if the applicant were removed from the United States. *Form I-290B, Notice of Appeal or Motion*, dated October 22, 2007. In support of the waiver application, counsel submitted additional evidence.

On October 7, 2010, the AAO considered the evidence of record and sustained the applicant's appeal, finding her to have met the waiver requirements of section 212(i) of the Act and to merit a favorable exercise of the Attorney General's (now Secretary of Homeland Security, "Secretary") discretion. Based on the evidence elicited during the applicant's June 7, 2011 adjustment interview, and pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(ii), the AAO reopened the applicant's proceeding on motion, withdrew the prior decision and denied the application. *See Decision of the AAO,* dated August 25, 2011.

The applicant's attorney, on appeal, asserts that AAO abused its discretion by reversing its decision. The applicant's attorney indicates that the travel warning to the Philippines has not changed, and that the applicant and qualifying spouse would face "calamitous" financial hardship if they return to the Philippines. The applicant's attorney also contends that the qualifying spouse's health conditions would be exacerbated by the applicant's deportation, whether he remained in the United States or he relocated to the Philippines.

The record includes, but is not limited to, briefs written on behalf of the applicant; statements from the applicant, her sisters, her spouse and his children; identification and relationship documents for the applicant and qualifying spouse; letters of support; financial documentation; medical documentation regarding the applicant and qualifying spouse; a psychological evaluation of the applicant's spouse; letters from the applicant's and her spouse's employers; proof of health insurance coverage; photographs; country conditions materials on the Philippines; approved Petitions for Alien Relative (Forms I-130) filed by the applicant's spouse and sister; and an

Application to Register Permanent Residence or Adjust Status (Form I-485) with supporting documentation. The entire record has again been reviewed and all relevant evidence considered in arriving at a decision on the waiver application.

Section 212(a)(6)(C) of the Act states in pertinent part:

> (i) 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 chapter is inadmissible.

The record reflects that, on June 14, 1994, the applicant entered the United States with a passport and visa that were not issued to her. Accordingly, she is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for having obtained a benefit through fraud or willful misrepresentation. The applicant has conceded her inadmissibility.

Section 212(i) of the Act provides that:

> (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 immigrant 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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. The applicant's husband 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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 BIA 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.

In the AAO's first decision, October 7, 2010, the AAO concluded that the applicant's spouse would suffer extreme hardship if he returned to the Philippines with the applicant. In reaching our initial decision, the AAO considered the travel warning for the Philippines issued by the Department of State; the separation of the applicant's spouse from his children and grandchildren; his health concerns, including diabetes, hypertension and depression; and the financial hardship he would

experience as a result of returning to the Philippines. The evidence submitted, considered in the aggregate, supported finding that the applicant's qualifying relative would experience extreme hardship if he were to relocate to the Philippines. In its August 25, 2011 decision, the AAO upheld this finding and will not revisit it at this time. *See Decision of the AAO,* dated August 25, 2011.

While the AAO previously accepted that the applicant was her spouse's healthcare provider, her June 7, 2011 testimony established that at the time of the first appeal, she was working in Torrance, California and had not lived with or provided health care for her spouse on a daily basis since at least August 2006. Accordingly, the AAO found the record failed to demonstrate that the applicant's spouse would experience extreme hardship as a result of their separation because he depended on her for his healthcare needs.

The AAO stated that the applicant's "failure to establish that [her qualifying spouse] would also suffer extreme hardship in the United States prevents her from establishing extreme hardship under section 212(i) of the Act and she is, therefore, statutorily ineligible for a waiver of her inadmissibility." *See Decision of the AAO,* dated August 25, 2011. With respect to the hardship that the applicant's qualifying spouse would experience upon his separation from the applicant, the applicant's attorney contends on appeal that the qualifying spouse's health conditions would be exacerbated and that they speak with each other on the phone several times a day. She makes sure during their phone conversations that he is taking his daily medication, as they no longer live near each another. Counsel in the instant appeal, however, fails to reconcile how this claim is consistent with previous assertions that the applicant prepares special meals and closely monitors her spouse's blood pressure and blood glucose, given her residing 350 miles away from him. The AAO finds that the assertions made by counsel on appeal, absent corroborating evidence, fail to demonstrate that the qualifying spouse relies on the applicant for his healthcare needs. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *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).

Similarly, applicant's counsel asserts on appeal that the new information obtained at the June 7, 2011 adjustment interview does not change the impact their separation would have on the qualifying spouse's mental health. However, in reversing its decision, the AAO explained that the evidence it primarily relied upon with respect to the applicant's spouse's potential mental hardships included a psychological evaluation conducted in February 2006, before the applicant moving hundreds of miles away from him. The AAO explained that, as a result, the assessment fails to reflect the applicant's spouse's current living situation with the applicant and how it affects his mental and emotional health. The applicant's counsel did not provide any additional documentation to support his assertions or address these concerns. *See Matter of Obaigbena* at 534.

In the instant appeal, the applicant's counsel asserts that the qualifying spouse would suffer financial hardship upon separation from the applicant. The AAO explained that it was no longer able to determine what financial impact, if any, the applicant's removal would have on her spouse, given the

2011 evidence showing that they lived apart. As no additional assertions or evidence was provided regarding financial hardship upon separation, our position has not changed.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

As no new evidence was provided on appeal regarding whether the applicant merits a waiver as a matter of discretion, no purpose would be served in reconsidering this matter.

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.