(b)(6)

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]

Date: APR 0 8 2013 Office: LOUISVILLE, KY FILE: [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, Louisville, Kentucky. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Colombia who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for obtaining a non-immigrant visa with a passport issued to another individual and using it to gain admission into the United States. The applicant is the beneficiary of an approved Petition of Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director,* dated June 7, 2012.

On appeal, the applicant's attorney asserts the waiver application and supporting evidence adequately establishes extreme hardship to the applicant's spouse, should the applicant's waiver be denied.

The record contains two Applications for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); an appeal brief and letters from the applicant's attorney; letters from the qualifying relative, her brother, a minister, her former employer, the organization for which she volunteered and friends; letters from a licensed clinical social worker regarding the qualifying spouse; relationship and identification documents for the qualifying relative and applicant; photographs; financial documentation, including home ownership records and the qualifying spouse's credit report; proof of remittances the applicant sent to individuals in Colombia; two approved Forms I-130; and two Forms I-485, Application to Register Permanent Residence or Adjust Status with supporting documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

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 [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 [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. The applicant's wife is the 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. *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.

Concerning the hardship the qualifying spouse would experience if the applicant were removed from the United States, she states that she "had never met someone [she] was so passionate about and cared so much for," that he emotionally supports her and that he is her best friend and "soul mate." Further, according to a social worker, the qualifying spouse has been receiving psychotherapy for post-traumatic stress syndrome and to cope with abandonment issues. The social worker indicates that her disorder has "severely limited her ability to support herself and to maintain relationships with peers." The social worker adds that soon after beginning her therapy, the qualifying spouse was unable to continue her employment, and her therapeutic progress would be jeopardized without the applicant actively in her life. However, this evidence seems to contradict other evidence showing that the qualifying spouse participated in volunteer humanitarian work that required her to travel without the applicant for five months, during which she was able to lead teams and complete projects. Further, the social worker also indicates that the qualifying spouse experienced childhood traumas, resulting in "dissociative memory loss." However, the letter lacks detail regarding the specific emotional and psychological hardships that the applicant's spouse is currently experiencing as a result of her disorder and childhood traumas, and the evidence provided fails to specifically address how her emotional and psychological hardships would rise beyond the ordinary hardships associated with separation.

The applicant's spouse also indicates that the applicant financially supports her and that without him she would not have had the opportunity to pursue her passion of humanitarian work, which was unpaid. She also states that she plans to finish college in order to allow her to work more extensively around the world and that she would not be able to focus on her studies without the applicant and without his financial support; she would be unable to afford their home. The record contains documentation regarding the applicant and qualifying spouse's expenses, including proof of their mortgage payments. In addition, the record contains tax and earnings statements indicating that the applicant earned approximately $31,000 and the qualifying spouse earned approximately $26,000 in 2010. Although evidence in the record corroborates claims that the applicant's spouse was not paid during the five months she volunteered on a humanitarian mission, the record does not contain current financial documentation to demonstrate that the applicant has been her sole financial

support since her volunteer experience, that she is unable to work or that she has enrolled in school. Further, several of their friends indicate that she took a "leave of absence" from work to volunteer and according to her former employer the applicant would support her as she returned to the "paying workforce." As such, the applicant has not provided sufficient documentation regarding his qualifying spouse's emotional and financial hardships that, considered in the aggregate, show that she would experience as a result of her separation from the applicant. The AAO finds that the applicant has not shown that his qualifying spouse will suffer extreme hardship as a consequence of her separation from him.

With respect to the hardship the qualifying spouse would experience if she were to relocate to Colombia, the applicant's attorney states that the qualifying spouse has no social ties in Colombia and that relocation would "interrupt both her therapy and the humanitarian work which has been key to her recovery." However, the record lacks evidence corroborating counsel's claims. The record does not indicate how the applicant's qualifying spouse managed her need for therapy while away for five months or whether she still requires therapy. Additionally, the applicant does not address whether his spouse could pursue her humanitarian work from Colombia. Although the applicant's attorney indicates that the applicant would not be able to support her endeavors if he lost his business in the United States, no objective documentation in the record supports such assertions. Similarly, the applicant's attorney indicates that the applicant's spouse would be unable to find employment as a foreigner in Colombia. Without documentary evidence to support these claims, the assertions of counsel will not satisfy the petitioner'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). The current record does not establish that the qualifying spouse would experience extreme hardship as a result of her relocation to Colombia.

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 U.S. citizen spouse 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 the applicant 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.