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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: FEB 19 2013 OFFICE: NEWARK FILE: [redacted] consolidated therein)

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) and 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, Newark, New Jersey and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Bolivia 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 attempting to procure admission into the United States through willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with U.S. citizen spouse and step-child.

The director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director,* dated June 21, 2010.

On appeal, counsel asserts that the director's decision is erroneous and the applicant has shown extreme hardship to his qualifying relative spouse. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received July 21, 2010, *and counsel's brief.*

The record contains, but is not limited to: Form I-290B and counsel's brief; Form I-601; Forms I-130; Forms I-485, Application to Register Permanent Residence or Adjust Status; country-conditions information; a statement by the applicant's spouse; naturalization, birth, divorce and marriage certificates; tax returns; financial documents; and a letter from applicant's spouse's employer. 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 that:

> (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 reflects that the applicant attempted to enter the United States on May 21, 1994 using a fraudulent Bolivian passport and documents in the name of [redacted] Upon further inspection, the applicant admitted to buying fraudulent documents to attempt to enter the United States. On the same day, the applicant voluntarily returned to Bolivia. On July 21, 2000, the applicant entered the United States with a non-immigrant visitor visa and was authorized to remain until January 19, 2001. There is no evidence that the applicant left the United States since his last entry. The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act. Counsel does not contest the applicant's inadmissibility.

Section 212(i) of the Act states:

> (1) The Attorney General [now Secretary, Department 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 first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant and his child can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only 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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or U.S. 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).

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 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 contains references to hardship the applicant's step-son would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children 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 under section 212(i) of the Act, and hardship to the applicant's step-child will not be separately considered, except as it may affect the applicant's spouse.

The applicant's 27 year-old wife is a native of the Dominican Republic and citizen of the United States since November 2007. The applicant's spouse states that they have a good marital life, and she would not know what to do without him. She indicates that she cannot delineate the consequences of their separation, but they would be "irreparable." The applicant also maintains that his spouse would "suffer extreme adverse consequences" from their separation; she depends on the applicant "emotionally and financially." Financial documents in the record indicate that in 2009 the applicant's income alone was $30,370.00, and the applicant's spouse wages were $32,262.00. The record does not reflect financial dependency on the part of the applicant's spouse. The record also lacks corroborating evidence of expenses, financial obligations, and

emotional, psychological or other hardship the applicant's spouse would suffer as a consequence of their separation. 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)).

The applicant and his spouse also explain that the applicant's step-son has become dependent on the applicant and sees the applicant as a father. Although the AAO acknowledges that separation from the applicant would cause emotional difficulties for the applicant's spouse and step-son, the applicant has not distinguished his spouse's emotional hardship upon separation from that which is typically faced by spouses of those deemed inadmissible. Thus, considered in the aggregate, the AAO finds that the evidence is not sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if she remains in the United States.

Counsel contends that the applicant's spouse would suffer extreme hardship were she to relocate to Bolivia to live with the applicant, including hardship related to acculturation problems that her U.S.-born son will endure. He asserts that because she is not a native of Bolivia, she may undergo significant hurdles regarding her immigration status. Evidence of Bolivia's immigration requirements was not submitted. Counsel also states that there is no evidence of a family network in Bolivia to help support the applicant's spouse upon relocation. As noted by the field office director, evidence of the applicant's and his spouse's family ties inside and outside the United States was not submitted. Counsel has not addressed the deficiency on appeal. Counsel further explains that the applicant's spouse will face a lack of employment opportunities, be subject to Bolivia's income inequality and live with a lower standard of living as compared to the United States. Counsel submits lists from the CIA World Factbook as evidence, showing that while Bolivia has a shorter life expectancy, higher infant mortality, and higher inequality of family income distribution than the United States, Bolivia also has a lower unemployment rate, greater rate of investment and lower death rate. Corroborating evidence of how these country-conditions would affect the applicant's wife, such as her ability to gain employment, her education, knowledge, skills or any health concerns was not submitted on appeal. Without documentary evidence to support the claim, 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 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO has considered cumulatively all assertions of relocation-related hardship, including the applicant's wife's years in the United States, her adjusting to a country in which she has not resided, her loss of employment, and stated economic concerns of relocating to Bolivia. The AAO finds that, considered in the aggregate, the evidence is not sufficient to demonstrate that the applicant's wife would suffer extreme hardship if she were to relocate to Bolivia to be with the applicant.

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. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.