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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JAN 30 2013 Office: BALTIMORE FILE:

IN RE: Applicant:

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:

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 with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a request 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 District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nigeria 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 having attempted to procure a benefit under the Act through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. 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 her U.S. citizen spouse.

The District Director concluded that the applicant had failed to demonstrate extreme hardship to her qualifying spouse and denied the application accordingly. *See Decision of District Director*, dated August 9, 2011.

On appeal, counsel for the applicant asserts that the Field Office Director erred in finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. Counsel contends that although the applicant made a false statement to immigration officers, she made a timely retraction of her statement. Counsel also asserts that the applicant's qualifying spouse would suffer extreme hardship if the applicant were removed to Nigeria. *Counsel's Brief.*

The record includes, but is not limited to, statements from the qualifying spouse and the applicant; financial records; and education records. 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:

> (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 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.

In the present case, the record reflects that the applicant married a U.S. citizen, , on December 16, 2002. filed a Form I-130, Petition for Alien Relative, on the applicant's behalf and the applicant concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. While the applicant's Form I-485 was pending, immigration officers conducted a site visit at her home on January 5, 2009. During that visit, the applicant told the officers that she and lived together at her home. However, she later admitted that she and had not resided at the same address since their separation in 2006.

The burden of proving admissibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Counsel refers to *Matter of M-* in asserting that the applicant made a timely retraction in that she "voluntarily and prior to any exposure of the attempted fraud corrected [her] testimony . . . ." 9 I&N Dec. 118, 119 (BIA 1960). However, the evidence indicates that the applicant only admitted that she and had separated after being confronted with the fact that had already informed officers of the separation. Therefore, the applicant's "retraction was not made until it appeared that the disclosure of the falsity of the statements was imminent. It is evident that the recantation was neither voluntary nor timely." *Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973). Accordingly, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for attempting to obtain a benefit under the Act through misrepresentation. She is eligible to apply for a waiver under section 212(i) of the Act as the spouse of a U.S. citizen.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant herself can only be considered insofar as it causes extreme hardship to her qualifying spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (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 (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 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).

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 v. INS*, 138 F.3d 1292, 1293 (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.

In his statements, the qualifying spouse indicates that he would suffer extreme hardship if he were forced to relocate to Nigeria. He states that he shares custody of his young son and that he would not be able to abandon his son or take him to Nigeria. He also claims that he cares for his aging mother and that he would not be able to leave her alone in the United States, but that he could not provide her with proper financial support or medical care in Nigeria. The qualifying

spouse also states that his son and his mother have emotional bonds with the applicant and that they rely on her for care and support.

The AAO finds that the qualifying spouse would suffer extreme hardship upon relocation to Nigeria. The qualifying spouse shares custody of his son with his son's mother and would therefore be unable to see his son at all if he were to leave the United States. *See Order, Circuit Court for Prince George's County, Maryland.* He would also be separated from his lawful permanent resident mother, whom the qualifying spouse claims is elderly and requires his care. Additionally, the qualifying spouse has resided in the United States for several years so readjusting to life in Nigeria would be difficult for him. He would also lose his home and employment if he were to relocate. In the aggregate, these factors would create extreme hardship for the qualifying spouse.

However, the AAO finds that the applicant has failed to demonstrate that her qualifying spouse will suffer extreme hardship upon separation from her if the waiver application is denied. While the qualifying spouse may experience emotional hardship and inconvenience if the applicant is removed, there is no evidence that the separation would cause him hardship beyond that which is normally expected in the removal or inadmissibility of a close family member. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568. Although counsel claims that the qualifying spouse would suffer exceptional anguish upon separation from the applicant, the qualifying spouse does not make such a claim in his statement and there is no other evidence to support such a finding. 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 record also contains information regarding hardship the applicant's step-son and mother-in-law would suffer if the applicant were removed. The qualifying spouse alleges that his son and mother rely on the applicant for care and support and that they would be devastated if she had to leave the United States. However, the applicant's step-son and mother-in-law are not qualifying relatives for purposes of a waiver under section 212(i) of the Act. Therefore, hardship to them can only be considered to the extent that it would cause extreme hardship to the qualifying spouse. While the applicant's step-son and mother-in-law may suffer emotional hardship and inconvenience in the applicant's absence, there is no indication that such hardship to them would be so severe as to cause extreme hardship for the qualifying spouse.

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 in 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. at 632-33. The AAO therefore finds that the applicant has failed to establish extreme hardship to her 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 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.