(b)(6)

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

U.S. Citizenship and Immigration Services

[redacted]

Date: JUL 10 2013 Office: ST. PAUL FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Immigration and Nationality Act section 212(i); 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Michael Shumway

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The District Director, St. Paul, Minnesota, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). A subsequent appeal was dismissed by the Administrative Appeals Office (AAO), as were two previous motions to reopen and reconsider. The matter is now again before the AAO on another motion. The motion will be dismissed.

The applicant, a native and citizen of Guyana, was found inadmissible 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 procuring admission to the United States through fraud or willful misrepresentation of a material fact. The applicant 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 with her U.S. citizen spouse.

The District Director concluded that the hardship that the applicant's U.S. citizen spouse would suffer did not rise to the level of extreme as required by the statute and denied the waiver application accordingly. The applicant appealed that decision. The AAO dismissed the appeal on April 6, 2009, reaching the same conclusion as the District Director. The applicant filed a motion to reopen and reconsider the AAO's decision and that motion was dismissed on November 14, 2011. The AAO found that the applicant submitted evidence to demonstrate that her spouse would suffer from extreme hardship if he were to be separated from the applicant; however, the AAO found that the applicant did not demonstrate that her spouse would suffer extreme hardship if he were to relocate to Guyana with the applicant. The applicant subsequently filed another motion to reopen and reconsider, which was dismissed. The application is before us again now on another motion to reopen and reconsider.

On motion, counsel submits new letters from various individuals as well as country conditions information concerning Guyana. Counsel also states that the applicant entered the U.S. on her own passport and a visa that she believed was genuine.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant is inadmissible under section 212(a)(6)(C) of the Act due to her procurement of admission into the United States on August 24, 1999 using a fraudulent U.S. visa. On motion, counsel for the applicant states that the applicant believed the visa to be genuine.

The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), which provides, in pertinent part, that:

> 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.

A misrepresentation is generally material only if by making it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, which is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* 495 U.S. at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or

2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

The record indicates that the applicant has stated that she paid $8,000 to an individual so that she could travel to the United States. The applicant states that she gave her passport to this individual, travelled with him, and was admitted to the United States on August 24, 1999. She states when her passport was handed back to her by the individual, after going through immigration inspection in the United States, the page with the visa was torn out. The applicant also states that she believed her visa to be genuine. The applicant has not submitted supporting documentation to support these assertions. The AAO notes that the applicant did provide documentation that she reported to the authorities that her visa had been torn out of her passport. Additionally, the AAO notes that the applicant was refused a visitor visa to the United States at the U.S. Consulate in Guyana on June 8, 1999; however, she has not explained why she believed that she was then able to obtain a genuine visa after that denial. The burden of proof is on the applicant to establish by a preponderance of the evidence that she is admissible. *See* section 291 of the Act; *see also Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978). The AAO finds that to the extent that the applicant claims that her use of fraud or material misrepresentation to obtain admission to the United States was not willful, the record does not support this contention lacks merit. We find inadequate basis to disturb the finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.[1]

[1] The applicant claims to have been admitted to the United States on August 24, 1999. The AAO notes that she married her husband, then a U.S. lawful permanent resident on September 29, 1999, 36 days after her stated admission, presumably as a nonimmigrant. The applicant has not presented documentation that she did not have immigrant intent when she was admitted to the United States.

A waiver is available to the applicant under section 212(i) of the Act dependent on her showing that the bar to her admission would impose extreme hardship on a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. It is noted that Congress did not include hardship to the applicant or the applicant's child as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. Hardship to the applicant or her adult son will not be separately considered, except as it may affect the applicant's spouse. 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).

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.

The AAO previously determined that the applicant established that her spouse would suffer extreme hardship if he were to be separated from the applicant. We do not see a reason to disturb our previous finding. As stated in our previous decision, however, 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).

We will now turn to whether the new evidence submitted, when considered cumulatively with the evidence of record, demonstrates that the applicant's spouse would suffer extreme hardship if he were to relocate to reside in Guyana with the applicant. On motion, counsel for the applicant states that the new evidence presented illustrates the applicant's spouse would suffer extreme hardship if he were to relocate to Guyana. The AAO notes that none of the evidence submitted appears to contain new information. In particular, the evidence regarding diabetes in Guyana is either undated or dated previous to applicant's prior motion to reopen and reconsider. The doctor's letters submitted regarding the applicant's spouse's mental and physical condition do not appear to contain new information. Instead, the letters reiterate that the applicant's spouse will suffer from depression if he were to relocate to Guyana and that the applicant is receiving care in the United States for his diagnosis of Type II Diabetes Mellitus. Dr. [redacted] MD, in a letter dated October 2, 2012 states again that the applicant's spouse is being treated for Type II Diabetes Mellitus. In this new letter, Dr. [redacted] further indicates that the applicant's spouse's treatment includes aspirin, metformin, simvastatin, and lisinopril. Dr. [redacted] states that the applicant's spouse's "ongoing health requires regular followup of his medications and lab results as well as continued excellent efforts with daily fitness and healthy diet." There is no

documentation in the record that demonstrates that the applicant's spouse's medications and lab work would be unavailable in Guyana. A letter from the applicant's son, dated December 8, 2011, states that his father's medications would be unavailable in Guyana, but he did not provide a source for that information or documentation to back up that assertion.

Additionally, on motion counsel states that the evidence demonstrates that "diabetes patients have to fly to for treatment due to inadequate treatment facilities in Guyana." But, the documentation submitted does not support counsel's assertion. In fact, in an undated article written by a source whose credentials are not provided, the exact sentence that counsel appears to refer to states that "[w]ith the rapidly growing number of people with diabetes, hypertension and heart disease, this poses a problem as several individuals are required to fly to for treatment, however many are unable to afford to do so, considering the average income is about US $200/month." The source of the author's information was not provided, nor was any explanation provided concerning who is referred to as "several individuals." Additionally, a news article from dated April 13, 2011, submitted by counsel on motion, states that "a recent study has shown that persons living with diabetes have a great than 80 percent chance of dying prematurely." It is not known, however, what population of persons with diabetes this uncited study refers too and how this information applies to the applicant's spouse's health in Guyana as compared to the applicant's spouse's health in the United States, where diabetes is also a leading cause of death. Additionally, Dr. M.D., a psychiatrist who treats the applicant for depression, states "I have not personally visit Guyana, but I have looked in to the medical treatment which is available in Guyana and it is terrible and psychiatric care is almost nonexistent." Again, no sources where provided for this statement. We also pointed this out in our previous decision, where Dr. made a similar statement about the conditions of care in Guyana.

The applicant's son also makes the assertion that the family will lose investments in the United States if they were to relocate to Guyana. He also states that the family's financial situation would be worse in Guyana. He does not clarify what investments he refers to or provide documentation to support his contention that investments would be lost, nor does he indicate the value of those investments and why they would not provide the family with adequate money to resettle in Guyana. The record contains an unnotarized copy of the applicant and his spouse's mortgage agreement dated February 1, 2002, which does not indicate the present value of the property or the status of the applicant and his spouse's mortgage. 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, 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). 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 Guyana, 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.

As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case. 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.

The motion does not provide adequate basis to disturb the previous decisions in this case. Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant. After a careful review of the record, the AAO finds that in the present motion, the applicant has not met this burden. Accordingly, the motion is dismissed.

ORDER: The motion is dismissed.