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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: JUN 2 1 2013 Office: TEGUCIGALPA, HONDURAS FILE: [redacted]

IN RE: Applicant: [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, Tegucigalpa, Honduras. 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 Nicaragua 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 attempting to procure admission to the United States through fraud or misrepresentation. The applicant does not contest the finding of inadmissibility but rather 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 lawful permanent resident spouse.

The Field Office Director concluded that the applicant had 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. *Decision of the Field Office Director,* dated September 11, 2012.

On appeal, counsel contends that the evidence submitted with the Form I-601 is sufficient to establish that the applicant's spouse will suffer extreme hardship if the applicant's waiver application is not approved, and that with respect to legal issues, the Field Office Director's decision "appears to confuse the application of the pertinent law" to the facts of this case. *Brief in Support of Appeal*, dated October 12, 2012.

The record contains the following documentation: letters filed by the applicant's attorney in support of Form I-290B, Notice of Appeal or Motion and Form I-601; statements by the applicant's spouse and the applicant's daughter; medical documentation for the applicant's spouse and daughter; employment information for the applicant's spouse; copies of remittance receipts; photographs; and information on country conditions in Nicaragua. 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 that:

> 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 or, in the

> case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), 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 lawful permanent resident husband is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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).

The record reflects that the applicant last entered the United States on September 15, 1996, and she overstayed her authorized period of stay, departing the United States on July 20, 1997. The applicant subsequently attempted to re-enter the United States on July 27, 1997, with a fraudulent Nicaraguan immigration stamp in her passport to try to conceal the fact that she had overstayed her previous period of authorized stay. The applicant was expeditiously removed the next day, as she was ineligible for admission to the United States because she willfully misrepresented a material fact through her use of a back-dated stamp in her passport in an attempt to procure entry into the United States.

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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1993), (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.

Counsel and the applicant's spouse contend that the applicant's spouse suffers from "severe chronic health issues" that would result in medical hardship if the applicant's waiver application is not approved. To support this contention, the record includes a single medical report issued by the Ministry of Health in Nicaragua dated September 3, 2011, showing that the applicant's spouse is suffering from hypertension, chronic gastritis and anxiety disorder; he was prescribed three medications on an outpatient basis; and he was advised to follow a low-fat, low-sodium diet. However, the record contains no further details about the applicant's spouse's medical conditions to establish their severity and the effect that separation from the applicant has on his conditions. The evidence on the record is insufficient to conclude that the medical problems that the applicant's spouse is experiencing are resulting in hardship beyond the common results of removal or inadmissibility.

Counsel contends that the applicant's spouse suffers emotional hardship in the form of anxiety disorder as a result of his separation from the applicant. The only objective evidence addressing his

anxiety disorder, however, is the September 3, 2011 Ministry of Health report. Counsel's contention that the applicant's spouse is suffering emotional hardship appears to be based solely on the self-reporting of the applicant's spouse and is unsupported by other medical documentary evidence.

Counsel further contends that the applicant's spouse is suffering from financial hardship because he must single-handedly support the applicant's daughter, her child, and his two children from a previous marriage. The record indicates that the applicant's spouse earns $26,000 annually. Additionally, the applicant's daughter indicates in her statement that she is employed and uses her earnings to help support the applicant in Nicaragua. The record, however, does not contain evidence of the income or financial status of the applicant's daughter. The evidence in the record is insufficient to conclude that the qualifying spouse is unable to meet his financial obligations in the applicant's absence.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's lawful permanent resident spouse will face extreme hardship if the applicant is unable to reside in the United States. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's spouse would face as a result of his separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

Concerning the hardship the applicant's spouse would experience upon relocating to Nicaragua to reside with the applicant, counsel contends that the applicant's spouse fears returning to Nicaragua because he fled as a refugee from the civil war. However, the record shows that the applicant's spouse began to make regular trips to Nicaragua shortly after he was granted permanent resident status in the United States in 1999. A document from the Department of Migration and Aliens of the Government of Nicaragua indicates that the applicant's spouse made over 20 trips to Nicaragua starting in 2000 and that these trips preceded the relationship that the applicant's spouse began with the applicant, which, according to statements in the record, began in approximately 2007. The September 3, 2011 medical record from the Ministry of Health of Nicaragua indicates that the applicant's spouse received treatment for his chronic gastritis at the facility in Nicaragua for a period of "about two years." Moreover, the record does not contain psychological evaluations or other evidence to substantiate the claim that the applicant's spouse's anxiety disorder is exacerbated when he returns to Nicaragua.

Counsel further contends that the applicant's spouse would have difficulty finding employment if he were to relocate to Nicaragua. The record contains general country conditions information about Nicaragua, but it does not contain evidence that specifically corroborates counsel's claim regarding the applicant's spouse's ability to find work there. 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).

Based on the evidence on the record, the applicant has not established that her spouse would suffer hardship beyond the common results of removal if he were to relocate to Nicaragua to reside with the applicant. The AAO notes that the applicant's spouse was born in Nicaragua and is familiar with the language and customs in Nicaragua. Moreover, the record establishes that the applicant's spouse has traveled to Nicaragua many times within the last 13 years and has received medical treatment there. The emotional, financial, and medical hardship that counsel and the applicant's spouse describe is not corroborated by objective evidence that would support finding that this hardship, considered cumulatively, is extreme.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met her burden. Accordingly, the appeal will be dismissed

ORDER: The appeal is dismissed. The waiver application is denied.