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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: SEP 18 2013 OFFICE: LOUISVILLE, KENTUCKY File:

IN RE: Applicant:

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:

INSTRUCTIONS:

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Louisville, Kentucky, denied the waiver application and 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 Senegal 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The record indicates that the applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). She 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.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Field Office Director,* dated April 16, 2013.

On appeal counsel asserts that extreme hardship to the applicant's spouse has been established, and he submits additional evidence thereof. *See Form I-290B*, received May 20, 2013.

The record contains, but is not limited to: Form I-290B, counsel's statement thereon, and an appeal brief; various immigration applications and petitions; two hardship letters from the applicant's spouse; letters of character reference and support; a residential lease; medical and financial-related records; marriage, divorce, birth and child support-related documents, and family photos. The entire record was reviewed and considered in rendering this 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 shows that on September 19, 1999, the applicant presented her deceased cousin's visa and passport as her own at JFK International Airport in New York, where she was admitted as a B-2 nonimmigrant visitor. Based on the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The record supports this finding, counsel concedes inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. She requires a waiver under section 212(i) of the Act.

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. Hardship to the applicant and her children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is her 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,* 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.

The applicant's spouse is a 42-year-old native and citizen of the United States who has been married to the applicant since April 2011. He asserts extreme hardship of an emotional and economic nature, writing that he loves and needs the applicant who cooks and cleans for him and it would be a great burden to lose her. Counsel asserts that the applicant's spouse suffers from hypertension which "would very likely be exacerbated by the additional stress induced from the separation/loss of his wife and child." While the record contains a copy of a single prescription for Amlodipine Besylate 5mg from a [redacted] no medical records or correspondence from [redacted] have been submitted indicating any diagnosis or prognosis for the applicant's spouse or suggesting that his condition would be affected by separation from the applicant. 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). Counsel contends without explanation that between the applicant's spouse children, the applicant's daughters in Senegal, and their daughter together, "the collateral effects of this separation would be disastrous." While the AAO recognizes that the applicant's spouse loves the applicant and would miss her in the event of separation, the evidence in the record has not distinguished the difficulties described from those ordinarily associated with the inadmissibility of a loved one.

The applicant's spouse has not directly asserted economic hardship in the record, stating only that he and the applicant do not have much but they do have each other. Counsel contends that the applicant's spouse struggles financially, has a low-paying job and multiple child support obligations, and would be unable to meet his current financial obligations let alone support his wife and daughter in Senegal in the event of separation. The evidence in the record does not demonstrate that without the applicant's financial contribution to the household the applicant's spouse would be unable to meet his obligations. While counsel refers to "comingling of assets" as evidence of hardship, the only such evidence submitted is a statement showing that they started a new joint savings account on June 6, 2011 by depositing $25, and then withdrew the $25 on June 29, 2011 resulting in a zero balance. A residential lease signed by applicant and his spouse on May 5, 2012 indicates that they are jointly responsible for rent in the amount of $300 per month. There is no other evidence in the record of any jointly owed debts, jointly paid expenses or joint assets. 2012 income tax returns show that the applicant and her spouse filed separate returns, both listing themselves as head of household. The applicant listed her daughter with the applicant (as well as two other daughters) as her dependent. The applicant's spouse listed the applicant as a dependent, identifying her by her maiden name and where asked to indicate her relationship to

him noted "Other." While court-generated documents show that the applicant's spouse has child support obligations, there is nothing to indicate that the applicant contributes to these expenses or that the obligations would be unmet in her absence. Conversely, wire transfer receipts show various amounts of money sent to Senegal in March and April 2013, some to , one to , all from the applicant alone. Counsel further avers that it is very doubtful the applicant's spouse would be able to travel to Senegal to visit the applicant and his daughter. The record contains no written budget or other documentary evidence delineating the family's current expenses or anticipated future expenses from which an accurate determination might be made as to whether the applicant's spouse would suffer economic hardship in the applicant's absence. 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)). While the AAO recognizes that the applicant's spouse may experience some reduction in income as a result of separation, the evidence in the record is insufficient to demonstrate that he will be unable to meet his financial obligations in the applicant's absence.

The AAO acknowledges that separation from the applicant would cause various difficulties for the applicant's spouse. However, we find the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

The possibility of the applicant's spouse relocating to Senegal has not been addressed in the record. Though this deficiency was identified in the field office director's decision, it remains unaddressed by counsel, the applicant or her spouse on appeal. The only mention of relocation is by the applicant's spouse's sister, . She writes that moving to Senegal is not an option, as both the applicant and her spouse are established with jobs and plenty of family in the United States who love and care for them dearly. The AAO finds the evidence in the record insufficient to demonstrate that the applicant's qualifying relative spouse would suffer extreme hardship were he to relocate to Senegal to be with her.

The applicant has, therefore, failed to demonstrate that the challenges her spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether she merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.