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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

DATE: JAN 2 8 2014 OFFICE: NEW DELHI, INDIA [redacted]

IN RE: [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 (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. 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 waiver application was denied by the Field Office Director, New Delhi, India, and is now before the AAO on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Bangladesh 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 visa to the United States through fraud or misrepresentation. The applicant is the son of lawful permanent residents 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 reside in the United States with his lawful permanent resident parents.

The Field Office Director concluded that the applicant failed to demonstrate extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated August 8, 2012.

On appeal, counsel contends the applicant is not inadmissible for misrepresentation, as his true date of birth is July 16, 1990, not March 9, 1985. Counsel further asserts that even if the applicant is again found to be inadmissible, his lawful permanent resident parents would experience extreme hardship given his inadmissibility.

The record includes, but is not limited to, a brief in support, statements from the applicant and his parents, school records, identity documents, letters from family and friends, medical records, and other applications and petitions. 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, a U.S. Department of State investigation revealed that the applicant's date of birth, according to school records, was March 9, 1985, not July 16, 1990 as stated on his

immigrant visa application. Consequently, the U.S. Department of State and the Field Office Director found him inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure a visa through fraud or misrepresentation of a material fact, namely, his age. On appeal, counsel contests inadmissibility, asserting that the applicant was born in 1990, not in 1985, and that the finding of inadmissibility was due to a miscommunication between the investigators and the applicant's school. In support, counsel submits additional documents on appeal, including but not limited to documentation from a national identity card issued in 2010, and previously submitted letters from family.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this case, the Department of State conducted an investigation and found the applicant to be inadmissible for stating that he was born in 1990, when he was actually born in 1985. The applicant subsequently submitted documentation to establish that he was born in 1990. However, the new evidence, namely, a birth certificate, a receipt, previously submitted affidavits, a training center certificate, the letter from High School, and the national identity card, were dated from 2007 to 2012, and consequently were not issued contemporaneously with the applicant's birth. Furthermore, contentions that the Department of State mistakenly relied upon the school records of a "I instead of the applicant to make the finding of inadmissibility under 212(a)6)(C)(i) are not correct. The 1996 school register inspected during the Department of State's investigation indicate that " was born on March 9, 1985. Given this evidence, the documents submitted by the applicant, which were dated over twenty years after the applicant's birth, can only be given limited weight. Therefore, despite counsel's assertion to the contrary, it has not been established by a preponderance of the evidence that the applicant did not attempt to obtain an immigrant visa by fraud and/or misrepresentation. The AAO thus concurs with the Department of State and the Field Office Director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant's qualifying relatives for a waiver of this inadmissibility are his lawful permanent resident parents.

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. 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 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. 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.

Counsel claims his lawful permanent resident mother and father would experience extreme hardship in the event of continued separation from the applicant. Counsel states that the parents immigrated to the United States in 2008, and now, the father is 64 years old and the mother is 57. Counsel contends that the parents experience financial hardship without the applicant in the United States to provide for them. Counsel explains that the applicant's sister, who lives in Philadelphia, cannot provide them with financial support because she has a family of her own. Furthermore, the applicant's parents claim in joint affidavits that they have medical problems which limit their ability to work and, for the mother, create a need for assistance with daily tasks. The mother's physician indicates in two handwritten letters that she suffers from diabetes, gastritis, anemia, hypercholesterolemia, and thyroid problems, takes medication, and requires assistance with daily activities. Medical records are also present in the record. The father contends that because he now works part-time due to his age and his wife's illness, they face financial difficulties without the applicant's financial support.

The applicant's parents additionally assert that they would experience extreme hardship if they return to Bangladesh. They explain that when they obtained their immigrant visas, they disposed of all their property in Bangladesh, and would therefore find it difficult to return at this old age and restart their lives. The parents moreover state that the political turmoil, adverse country conditions, lack of adequate medical care, and the poverty in Bangladesh would also cause them difficulties. The applicant's parents further claim that they would not be able to support themselves financially, nor would the applicant be able to assist them with his income.

Although counsel and the applicant make several assertions about the hardship his parents will experience if they return to Bangladesh, these assertions are not supported by evidence. For instance, the record contains no documentation, such as information on country conditions, evidence on medical care, or real estate documents showing that the parents' real estate was sold. Although the assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. 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). Without supporting evidence, the AAO can give limited weight to these assertions of hardship.

The AAO notes that relocation to Bangladesh would entail separation from family members who live in the United States as well as other difficulties. However, we do not find evidence of record to show that the parents' difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient

evidence to demonstrate the emotional, financial, medical, or other impacts of relocation on the applicant's parents are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that they would experience extreme hardship if the waiver application is denied and the applicant's parent relocates to Bangladesh.

The applicant has also submitted insufficient evidence of hardship in the event of continued separation. The applicant's parents claim they will experience financial difficulties without the applicant earning an income in the United States. However, the record does not contain sufficient evidence of the parents' income and household expenses to support assertions of financial hardship. Nor is there documentation to show that the parents do not have sufficient financial assets, or that none of their other children are able to assist them financially. The applicant further fails to provide any evidence on whether he would be able to contribute financially if he could join her spouse in the United States. Without details and supporting evidence of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's parents will face.

The applicant has additionally failed to demonstrate that his parents will experience medical hardship without him present. The applicant has not submitted any documentation from a treating physician explaining the current medical condition of his father. Letters from the mother's physician establish that his mother has diabetes, gastritis, anemia, hypercholesterolemia, and thyroid problems, takes medication, and requires assistance with daily activities. However, there is no explanation of how severe these conditions are, what daily activities require assistance, and why the applicant's father or other children cannot assist her. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

While the AAO acknowledges that the applicant's parents would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that their hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's parents are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that they would suffer extreme hardship if the waiver application is denied and the applicant remains in Bangladesh without his parents.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to a lawful permanent resident parent 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 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.