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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

DATE: MAY 0 6 2014 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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 Director, Nebraska Service Center, 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 the Dominican Republic who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband in the United States.

The director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends that the immigration officer erred in finding that the applicant had worked in the United States without authorization. According to counsel, the applicant was helping her sister by taking care of her sister's children, but was never paid or employed. In addition, counsel contends the applicant established extreme hardship.

The record includes, but is not limited to, the following documents: a letter from the applicant; a letter from the applicant's husband, Mr. ; a copy of an Order from the Superior Court of New Jersey; a letter from Mr. 's physician; two letters from the applicant's physicians in the Dominican Republic; and a letter from the applicant's sisters. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

> In general.—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) provides, in pertinent part:

> (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien . . . .

In this case, the record shows that the applicant entered the United States for the fifth time on January 24, 2008, using a valid B-2 visitor's visa. The applicant concedes she obtained a

back-dated entry stamp on her passport indicating she returned to the Dominican Republic on February 22, 2008, when she actually returned on May 22, 2008. The director found the applicant made a material misrepresentation to gain a benefit under the Act, and also found that the applicant had engaged in unauthorized employment when she was in the United States. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting a material fact in order to procure an immigration benefit.

To the extent counsel contends the director erred in determining that the applicant engaged in unauthorized employment because she was merely helping out her sister and was never paid, 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). Although counsel states on the Form I-290B that a memo of law and additional evidence would be submitted within thirty days, to date, the AAO has not received any additional evidence or a brief with respect to this appeal. In any event, even assuming the applicant did not engage in unauthorized employment, the applicant is nonetheless inadmissible for willfully misrepresenting the dates of her prior stay in 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*, 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.

In this case, the applicant's husband, Mr. states that it was love at first sight and that his wife is his soul mate. According to Mr. most of his family and his only child live in the United States, and he is gainfully employed in the United States. He contends that he needs his wife with him and that being apart has caused him a great deal of pain, stress, anxiety, and depression. In addition, Mr. contends that returning to the Dominican Republic, where he was born, would mean being away from his loved ones and leaving his job.

After a careful review of the entire record, there is insufficient evidence to show that the applicant's husband, Mr. has suffered or will suffer extreme hardship if the applicant's waiver application were denied. If Mr decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. The record contains a letter from Mr. 's physician stating that Mr. has "Digestive and Depressive Disorders for which he takes medications on a regular basis." Although the input of any medical professional is respected and valuable, the letter does not provide any specifics regarding the diagnosis, prognosis, treatment, or severity of Mr. 's conditions. Mr. himself makes no mention whatsoever of any medical problems and there is no allegation he requires any assistance from his wife with whom he has never lived. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed. Regarding depression

and psychological hardship, there is nothing in the record to establish that any emotional issues Mr. may be experiencing are beyond that normally experienced by others in the same situation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). To the extent the record includes documentation showing that the applicant suffered a miscarriage and has seen a psychologist, although the AAO is sympathetic to the couple's circumstances, the only qualifying relative in this case is Mr. Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that if Mr. remains in the United States, the hardship he has experienced or will experience would be extreme, unique, or atypical compared to others separated from a spouse.

With respect to returning to the Dominican Republic, where Mr. was born, to avoid the hardship of separation, there is insufficient evidence in the record to show extreme hardship. Although the record shows he has a child from a previous marriage, the record does not contain a copy of the divorce decree or any custody agreement, but rather, the only document in the record is from the Superior Court of New Jersey directing Mr. to sign the child's passport and indicating that the child is permitted to travel outside the United States with either parent with at least thirty days advance notice. It is unclear from the record how often Mr. sees his son, whether or not he has custody, or to what extent, if any, he must provide child support. Regarding Mr 's contention that he will have to leave his loved ones and his employment in the United States, the record does not contain any corroborating documentation addressing his employment and there are no letters of support in the record. There is no evidence in the record to support his contention he would be unable to find employment and support his family in the Dominican Republic. In sum, the record does not show that Mr. s return to the Dominican Republic would be any more difficult than would normally be expected under the circumstances. Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that the hardship the applicant's husband would experience if he returned to the Dominican Republic amounts to extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing 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.