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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: MAY 21 2014 OFFICE: WASHINGTON FIELD OFFICE 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:

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 Washington Field Office Director, Fairfax, Virginia 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 Vietnam who was found 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 applicant is married to a U.S. citizen and is 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 or that she merits a favorable exercise of discretion, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Field Office Director,* dated December 8, 2012.

On appeal, counsel for the applicant contests inadmissibility and contends that the applicant's U.S. citizen spouse will experience extreme hardship if a waiver is not granted. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received January 8, 2013.

The record contains, but is not limited to: Form I-290B and counsel's statement thereon; an appellate brief and earlier brief in support of a waiver; various immigration applications and petitions; a hardship letter from the applicant's spouse; letters from the applicant's father, sisters and church pastors; psychiatric evaluations; employment, tax and financial records; country conditions reports for Vietnam; medical records for and photos of the applicant's father; marriage, divorce and birth certificates and family photos; passports; and the applicant's sworn statement and other documents related to her visa applications and U.S. entries. 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 applicant stated under oath, during her adjustment of status interview on September 6, 2012, that she has been divorced from her former husband, [redacted] since 2008. The record shows that on May 24, 2011 the applicant submitted an Online Nonimmigrant Visa Application (Form DS-160), to the U.S. Department of State, on which she falsely asserted that she was married at that time to Mr. [redacted] She did not correct the false assertion during her June 22, 2011 visa interview at the U.S. Consulate, Ho Chi Minh City, Vietnam, and the nonimmigrant visa was granted. The record shows that the applicant filed another Form DS-160 on February 14, 2012, on which it was asserted again that she was married to [redacted] The applicant submitted

the Form DS-160 with false information to a consular officer on March 15, 2012, cutting off a line of inquiry regarding her eligibility for a nonimmigrant visa, which she again procured. Based on the foregoing, the field office director determined that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

Counsel contests inadmissibility, asserting that the applicant was misguided and unaware of the contents of the visa applications prepared on her behalf by a third-party visa agency. She was told only to sign the documents, which she could not read because they were in English. In a sworn statement, signed by the applicant during her September 6, 2012 adjustment of status interview, she was asked if she understood that she is responsible for the information on her visa applications and that false or misleading information contained therein can result in inadmissibility to the United States. The applicant responded affirmatively. The applicant provided false information on two nonimmigrant visa applications, stating in 2011 and again in 2012 that she was married when she was in fact divorced since 2008. The misrepresentation of her marital status on these applications was relevant to her eligibility for a nonimmigrant visa, because they shut off a line of inquiry concerning whether she had significant ties to Vietnam and would likely return there. *See Kungys v. United States*, 485 U.S. 759 (1988); and *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961). The applicant has failed to demonstrate that she did not knowingly procure a visa and admission into the United States by willful misrepresentation. Accordingly, the AAO concurs with the field office director that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

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 or 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).

The field office director found that the applicant's father could not be considered a qualifying relative because while USCIS records indicate that he resides in the United States, the applicant has not provided documentation or made clear assertions regarding her father's immigration status. Despite the identification of this deficiency by the field office director, counsel for the applicant has not addressed the issue on appeal or submitted documentary evidence establishing status. Rather, counsel asserts in his appeal brief that the applicant's father is a "permanent resident" and a qualifying relative. On the Form I-601, prepared and signed by counsel, the applicant's father is listed as a U.S. citizen. No corroborating documentary evidence has been submitted. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant'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). While the applicant has submitted copies of her spouse's U.S. passport and naturalization certificate, and both of her sisters' lawful permanent resident cards, no such documentation has been submitted to

demonstrate her father's immigration status. As the evidence in the record does not establish that the applicant's father is a U.S. citizen or lawful permanent resident, he cannot be considered a qualifying relative for purposes of her waiver application.

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 58-year-old native of Vietnam and citizen of the United States who has been married to the applicant since May 2012 and asserts separation-related hardship of an emotional, physical, and economic nature. The applicant's spouse writes that he met the applicant while visiting Vietnam in 2008, they corresponded frequently thereafter, he spent time with her in Oklahoma in 2011 and in Virginia in 2012, and he never wants to be apart from her again. M.D. avers that stress over potential separation from the applicant has caused her spouse's blood sugar levels to increase and his blood pressure to rise and fluctuate. She adds that the applicant's spouse was hospitalized in the past because of medical complications. The record contains no corroborating medical records. Dr. relays from the applicant's spouse that he is experiencing sadness, anxiety, sleep disturbances, and difficulty concentrating at work and often makes mistakes and has accidents both while working and while driving on the road. No corroborating documentary evidence has been submitted. Dr. concludes that the applicant's spouse is now presenting the initial stage of major depression and anxiety which can only be lifted if his wife is permitted to remain with him in the United States. While Dr. 's evaluation has been considered, it appears to rely on self-reporting by the applicant's spouse during a single visit, lacks any discussion of diagnostic testing or methods, recommends no treatment for the conditions identified, and is not corroborated by documentary evidence of the applicant's medical history or the asserted workplace and automobile accidents. The evidence in the record is insufficient to distinguish the emotional or medical impact of separation on the applicant's spouse from those challenges normally associated with the inadmissibility or removal of a loved one. However, these assertions have been considered in the aggregate along with all other assertions of separation-related hardship.

Counsel avers that the applicant's spouse will experience economic hardship in the event of separation, noting that while his annual income increased from 2009 to 2011, it declined in 2012. Corroborating income tax returns have been submitted for the record. Counsel contends that as a result of the applicant's spouse's age, it is harder for him to earn as much money as before. No further explanation or corroborating documentary evidence has been submitted. Counsel states that the applicant earned $4,500 during the five months she worked and her income paid their cost of food and other expenses. Counsel asserts that the applicant's spouse cannot afford insurance and pays cash for visits to doctors and insulin shots and that with his earnings alone he could not even afford his medical costs. Counsel does not address whether the applicant's spouse met his financial obligations outside of the applicant's five-month period of employment. While financial documents have been submitted, they do not establish that the applicant would be unable to

support himself in the applicant's absence. However, these assertions have been considered in the aggregate along with all other assertions of separation-related hardship.

The applicant's father indicates that he is 73 years old, suffered a stroke after which the applicant took care of him, and he recently underwent prostate surgery and needs special care for his health and his spirit. He writes that his health could decline if the applicant returns to Vietnam because he will miss the care of a very pious daughter who could visit and attend to him during the last days of his life. A letter from the executive director of a free clinic confirms that the applicant took care of her father after his stroke. In a March 3, 2012 invitation letter requesting a nonimmigrant visa for the applicant, her lawful permanent resident sisters, and indicate that they will provide for the applicant in the United States if permitted to visit their father who is ill. As previously noted, the record contains no documentary evidence showing that the applicant's father is either a U.S. citizen or a lawful permanent resident and thus he cannot be considered a qualifying relative in these proceedings. Accordingly, hardship to the applicant's father can be considered only insofar as it affects the applicant's qualifying relative spouse. As no assertions have been articulated or evidence submitted addressing the impact of the applicant's father's hardship on the applicant's spouse, hardship to the applicant's father cannot be considered.

The AAO acknowledges that separation from the applicant has and will likely continue to 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 applicant's spouse asserts relocation-related hardship of an economic, familial and physical nature. Counsel avers that the applicant's spouse has resided since 1975 in the United States, where he enjoys family ties to his children, siblings, and mother, and has no family ties to Vietnam. Counsel asserts that the applicant's spouse is diabetic, insulin-dependent, and would be unable to afford the type of insulin monitoring and injections in Vietnam he currently enjoys in the United States. As noted previously, the record contains no documentary medical evidence for the applicant's spouse. It further contains no evidence establishing that the applicant's spouse would be unable to secure or afford health services in Vietnam.

Addressing relocation, counsel asserts that the applicant's father was sent to a re-education camp in Vietnam for eight years, endured three additional years of daily supervision with torture, came to the United States in 1994, and has no ties to Vietnam after such suffering. Counsel avers that the applicant's father is permanently disabled as a result of a 1994 workplace injury and that his only family ties are to the United States where his two younger daughters are lawful permanent residents.

As noted previously, the record contains no documentary evidence establishing that the applicant's father is a U.S. citizen or lawful permanent resident, and thus a qualifying relative for waiver application purposes. Though this deficiency was identified in the field office director's decision, it remains unaddressed on appeal. The record contains no assertions or evidence addressing the

impact of the applicant's father's relocation-related hardship on the applicant's spouse and accordingly, hardship to the applicant's father cannot be considered.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including his adjustment to a country in which he has not resided for nearly 40 years; his lengthy residence in the United States of the same duration; his family ties in the United States to his children, siblings and mother; and asserted medical/physical and economic concerns for Vietnam. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to Vietnam to be with the applicant.

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 he 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.