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



U.S. Citizenship
and Immigration
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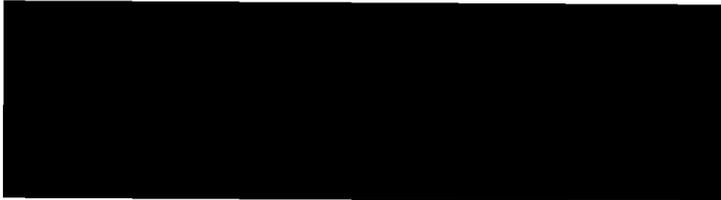
OFFICE: FRESNO, CA

FILE: 

IN RE: 

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:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Fresno, California and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Guatemala 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 having attempted to enter the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is the spouse of a U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The Field Office Director found that the applicant had failed to establish that her inadmissibility would result in extreme hardship for a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated January 4, 2011.

On appeal, the applicant contends that the applicant is not inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act and, alternately, asserts that United States Citizenship and Immigration Services (USCIS) misinterpreted and minimized the hardship that the applicant's spouse would experience if she is removed, and exaggerated the negative factors in her case. *Form I-290B, Notice of Appeal or Motion*, dated February 2, 2011.

The record includes, but is not limited to, statements from the applicant, her spouse, a friend of her spouse and one of her sisters; letters of support for the applicant; listings of the applicant's and her spouse's monthly expenses; documentation relating to the applicant's and her spouse's financial obligations; 2008 and 2009 tax returns for the applicant and her spouse; school records for the applicant's son; a letter from the applicant's son's teacher; country conditions information on Guatemala and documentation previously submitted in support of the applicant's 1992 asylum application. The entire record was reviewed and all relevant information considered in reaching a 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 establishes that, on March 3, 1992, the then 17-year-old applicant attempted to enter the United States with a cousin using a joint passport issued to a [REDACTED].

On appeal, counsel contends that the applicant is not subject to section 212(a)(6)(C)(i) of the Act as she was a minor at the time of her attempted entry and, therefore, lacked the requisite capacity to commit fraud or misrepresentation. She submits a copy of 1997 guidance issued by the legacy Immigration and Naturalization Service (INS) concerning the processing of unaccompanied minors who appear inadmissible under sections 212(a)(6)(C) or (7) of the Act at ports of entry. Counsel also asserts that pursuant to guidance provided by the Department of State in its Foreign Affairs

Manual, the applicant is not subject to section 212(a)(6)(C)(i) of the Act because she did not necessarily use the passport she was carrying to enter the United States, as she immediately stated her true identity to an immigration inspector at the port of entry.

In light of counsel's assertions, the AAO will first consider if USCIS has erred in barring the applicant's admission to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(a)(6)(C)(i) of the Act is violated by committing fraud or willfully misrepresenting a material fact. The BIA has found fraud to consist of "false representations of a material fact made with knowledge of its falsity and with intent to deceive" and that in the immigration context, a finding of fraud requires that an individual "know the falsity of his or her statement, intend to deceive the Government official, and succeed in this deception." *See Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956); *see also In re Tijam*, 22 I&N Dec. 408, 424-25 (BIA 1998). Willful misrepresentation does not require an intent to deceive, only the knowledge that the representation is false. *See Parlak v. Holder*, 57 F.3d 457 (6th Cir. 2009)(citing to *Witter v. I.N.S.*, 113 F.3d 549, 554 (5th Cir. 1997); *see also Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995); *In re Tijam, supra*. "The element of willfulness is satisfied by a finding that the misrepresentation was deliberate and voluntary." *See Mwongera, supra*. Therefore, a section 212(a)(6)(C)(i) finding of inadmissibility requires a determination that an individual has committed fraud or misrepresentation with an understanding of what he or she was doing.

While the AAO is unaware that the Board of Immigration Appeals (BIA) has published any decisions in which age has been a dispositive factor in determining inadmissibility under section 212(a)(6)(C)(i) of the Act, the issue of age and its relationship to an individual's culpability have been addressed by several circuit courts in cases involving immigration fraud. In *Singh v. Gonzales*, the Sixth Circuit Court of Appeals found that the immigration fraud committed by the parents of a five-year-old child could not be imputed to her as fraudulent conduct "necessarily includes both knowledge of falsity and an intent to deceive" and requires proof of such. 451 F.3d 400, 407 (6th Cir. 2006). The Sixth Circuit found that imputing fraud to a five-year-old child was "even further beyond the pale," than imputing a parent's negligence to that child. *Id.*, at 407. However, in *Malik v. Mukasey*, the Seventh Circuit Court of Appeals found that two 17-year-old brothers whose father had misrepresented their identities, nationality, and religious affiliation when he listed them as derivatives on his asylum application, could be held accountable for that fraud. While the brothers contended that the immigration judge had erred by imputing their father's fraud to them, the court concluded that the brothers "given their ages at the time" were accountable for the misrepresentations. The court also indicated in its opinion that the BIA had previously acknowledged that while the brothers were young at the time their father filed for asylum, "they were old enough to know better and to be held accountable for their actions." 546 F.3d 890, 892-893 (7th Cir. 2008). In deciding the case, the Seventh Circuit specifically noted that young was a "relative term and that "[b]eing over 16 - and eligible for a driver's license - is quite different than being 10." *Id.*, at 892.

The AAO notes that the emphasis placed on the capacity to understand in determining accountability in the preceding legal decisions is also reflected in the 1997 legacy INS (now USCIS) guidance submitted by counsel. While the guidance indicates that USCIS has historically been lenient with unaccompanied minors found inadmissible for misrepresentation, it also establishes that section

212(a)(6)(C)(i) has been applied in cases where minors have been found to have “clearly understood they were committing fraud.”

In the present case, the applicant was a minor on March 3, 1992, the date she and her cousin sought admission to the United States by presenting the joint passport issued to [REDACTED]. However, her sworn statement indicates that she voluntarily presented the passport to the immigration inspector knowing that it was not hers and that it had been purchased for her by her sister. Further, at the age of 17, the applicant, like the respondents in *Malik v. Mukasey*, was old enough to understand what she was doing was wrong. Accordingly, we find that the applicant’s presentation of the joint passport to an immigration inspector constituted a willful misrepresentation under the Act.

The AAO has also considered counsel’s assertion regarding the applicant’s timely retraction of her misrepresentation. We note that in *Matter of M*, 9 I&N Dec. 118 (BIA 1960), the Board of Immigration Appeals (BIA) held that a respondent who had asserted and then voluntarily retracted his claim to being a lawful permanent resident during the same interview could establish the good moral character necessary for a grant of voluntary departure. The BIA has also found respondents to have “timely retracted” misrepresentations in cases where they used fraudulent documents only *en route* to the United States and did not present them to U.S. officials for admission, but, rather, immediately requested asylum. See, e.g., *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); cf. *Matter of Shirdel*, 18 I&N Dec. 33 (BIA 1984). The AAO also notes that the Department of State follows similar reasoning in determining whether a misrepresentation on the part of an overseas visa applicant should result in a finding of inadmissibility under 212(a)(6)(C)(i) of the Act:

A timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for INA 212(a)(6)(C)(i) inadmissibility. Whether a retraction is timely depends on the circumstances of the particular case. In general, it should be made at the first opportunity. If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview.

Foreign Affairs Manual (FAM), Title 9, Section 40.63, Note 4.6.

In the present matter, however, the record fails to indicate that the applicant’s retraction of her misrepresentation was timely. Contrary to counsel’s assertion regarding the immediate nature of the applicant’s retraction, the applicant’s March 3, 1992 sworn statement indicates that she did not immediately state her true identity after arriving at the port of entry. Instead, as previously discussed, the applicant’s statement establishes that at the time of her primary inspection, she and her cousin presented [REDACTED]’ passport to the legacy INS inspector who conducted their initial inspection. Although the record does demonstrate that the applicant admitted to her true identity at the port-of-entry, her admission was made during her secondary inspection, rather than at the first opportunity and, therefore, cannot be considered timely.

Based on the record before us, the AAO concludes that the applicant’s use of the joint passport issued to [REDACTED] in her attempt to enter the United States constitutes a willful misrepresentation of a material fact and bars her admission under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission would result extreme hardship for a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's spouse is the only qualifying relative in the present case. Hardship to the applicant or other family members can be considered only insofar as it results in hardship to the applicant's spouse. 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*, 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 BIA 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 BIA 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 BIA 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, the AAO considers the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

We now turn to a consideration of whether the record establishes that the applicant’s inadmissibility under section 212(a)(6)(C)(i) of the Act would result in extreme hardship for her spouse.

In support of the waiver application, counsel asserts that the applicant’s removal would result in extreme hardship for her spouse as she helps him maintain a financial and emotional balance in his life. She notes the panic and despair felt by the applicant’s spouse at the time of the applicant’s June 2009 detention and contends that his emotional distress over the applicant’s removal would result in problems with his physical health. Counsel also states that the emotional hardship experienced by the applicant’s spouse would be exacerbated by his concerns for the applicant’s safety in Guatemala, which counsel describes as a dangerous and impoverished country where women are particularly vulnerable. Counsel further contends that if the applicant’s son relocates with his mother, the curtailment of his access to education would be a source of concern for his stepfather. She also asserts that if the applicant’s son remains in the United States without his mother, the child’s unhappiness would add to his stepfather’s suffering.

Counsel also maintains that the applicant’s removal would result in financial hardship for her spouse because she currently takes care of many of the practical aspects of their life together, allowing him to focus on his business responsibilities. Counsel reports that during the applicant’s 2009 detention, her spouse had difficulty running his business, and that the applicant’s immigration problems have prevented him from focusing on his business responsibilities. Counsel points to the lists of business and personal expenses submitted by the applicant as evidence of the applicant’s spouse’s tenuous financial situation and his need for the applicant’s assistance in dealing with the day-to-day operations of his business and their home life.

In a November 2, 2009 statement, the applicant’s spouse, [REDACTED] reports that one of the most stressful and emotional times in his life was the arrest and detention of the applicant in June

2009, and that he felt as though the world had fallen on him. [REDACTED] asserts that the applicant's immigration case has taken an emotional and physical toll on him, and has also affected him financially. He states that he owns a business, which he operates by himself, and that his business depends on his well-being and the time he is able to spend at his shop. When the applicant was detained, [REDACTED] maintains, he was unable to think or operate any machinery at his business. He states that as a result of the applicant's immigration problems, he is mentally and physically exhausted and devastated, and has not been able to devote the time necessary to maintain a successful business, especially in the current economy. He also contends that without the applicant's help, his business has suffered. [REDACTED] further indicates that he is worried about how his stepson would be affected by his mother's removal as during the applicant's detention, he withdrew from everyone and was unresponsive.

The applicant's sister, [REDACTED] reports in an October 20, 2009 statement that the applicant's detention resulted in both emotional and financial hardship for her brother-in-law. [REDACTED] asserts that the applicant's spouse was so worried about the applicant that he was unable to eat or sleep, and that he lost weight and looked terrible. She also states that the applicant's spouse was stressed about many issues, including his business and having to run it alone, and that the expenses associated with hiring a lawyer, driving back and forth to San Francisco to see the applicant and telephone calls resulted in financial hardship for him. [REDACTED] maintains that if the applicant is removed, her brother-in-law will fall apart. She states that what happened to him when her sister was in detention only previews the complete wreck he would become in her sister's absence.

In an October 28, 2009 statement, [REDACTED], a business neighbor and friend of the applicant's spouse, reports that the applicant's spouse had a "mental breakdown" on the day that the applicant was detained, and that he was unable to think or operate most of the machinery in his shop for several days. The applicant's spouse, [REDACTED] states, started to return to normal once he learned where the applicant was being held and that she would not be removed immediately. He indicates that in the months that followed, he spent many hours with the applicant's spouse helping him operate his machines when he was unable to focus on his work. He states that driving to visit the applicant in detention and work took a huge toll on the applicant's spouse, both financially and physically, and that he suffered from mental fatigue. [REDACTED] also reports that the applicant's son broke down emotionally when his mother was detained and that his stepfather tried to spend as much time as possible with him during her absence.

Also included in the record is an October 29, 2009 statement from [REDACTED], the applicant's son's third grade teacher, who reports that the applicant's son is having difficulty focusing and that it is affecting his ability to succeed in school. An August 28, 2009 letter written by the applicant's son to his mother and stepfather states that he was very sad when the applicant was detained and that he does not want the applicant to leave him.

To establish the conditions in Guatemala, the applicant has submitted a 2008 Amnesty International report on Guatemala; the section on Guatemala from the CIA World Factbook, last updated on October 28, 2009; the Universal Periodic Review of Guatemala by Human Rights Watch, dated May 4, 2008; a Guatemala Country Brief, prepared by the World Bank and updated as of September 2006; articles on the educational system in Guatemala prepared by Organisation Esperanza and Studentweb at Tulane University; a USAID report on health and education in Guatemala; a 2008 resolution issued by the U.S. Senate in response to the significant increase in the number of women

and girls murdered in Guatemala since 2001; and a report prepared by the Center for Gender & Refugee Studies, University of California, entitled "Guatemala's Femicides and the Ongoing Struggle for Women's Human Rights," September 2006.

To support the claim of financial hardship, the applicant has provided two lists of her and her spouse's monthly financial obligations, one relating to the family's business expenses in the amount of \$9,624.66 and one indicating their personal expenses, which totals \$2,969.66. The record also includes a 2007 rental agreement, documentation of a car loan and car payments, various insurance bills; a county property tax assessment for the home in which the applicant's spouse's prior wife resides and utility bills.

While the AAO acknowledges the preceding statements and the evidence that has been submitted in support of them, we do not find the record to establish the emotional and financial hardship claimed on behalf of the applicant's spouse. The descriptions of the applicant's spouse's reaction to the applicant's June 2009 detention and his concerns over his stepson's response to this same event are noted, but in the absence of supporting documentary evidence, e.g., medical or psychological reports or evaluations, they do not establish the nature or extent of the emotional hardship that the applicant's spouse would experience if the applicant is removed and her spouse remains in the United States. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)).

We have also considered counsel's assertions regarding the emotional hardship that the applicant's spouse would experience as a result of his concerns over the applicant's safety in Guatemala, as well as his stepson's inability to obtain an education in Guatemala should he relocate with his mother. However, while we find the country conditions materials submitted for the record to indicate that gender-motivated killings are a human rights issue in Guatemala and that on the average, schooling in Guatemala lasts only four years and only three out of ten children graduate from the sixth grade, these same materials do not provide sufficient information to establish that the applicant's situation in Guatemala would place her at specific risk of gender-related violence or that her son would not have access to a full range of educational opportunities upon relocation.

We further note the applicant's spouse's claim that the applicant's immigration problems have affected his ability to focus on his business and that, as a result, the business has suffered financially. Again, however, the record contains no documentary evidence, e.g., proof of declining sales, missed delivery dates, dissatisfied customers, etc. that would establish the applicant's spouse's business is suffering from his neglect. *Matter of Soffici, supra*.

With regard to the emotional hardship that would be experienced by the applicant's son if his mother is removed and he remains in the United States, the AAO again notes that the applicant's son is not a qualifying relative for the purposes of this proceeding and that the record must therefore establish how any hardship he might suffer as a result of his mother's removal would affect his stepfather. We observe that the record contains an October 29, 2009 statement from the applicant's son's third grade teacher who indicates the applicant's son is having trouble focusing in school. This statement, however, fails to indicate the reason for the applicant's son's lack of focus and, therefore, that it relates to his separation from his mother at the time of her 2009 detention. Accordingly, the record does not demonstrate the impact of separation on the applicant's son or that the applicant's spouse

would experience hardship as a result of his stepson's problems in dealing with the applicant's removal.

We also find the record to lack the documentary evidence necessary to establish that the applicant's spouse would experience financial hardship in her absence. As previously noted, the record does not establish that the applicant's spouse's distraction as a result of his concerns over the applicant's immigration situation has resulted in financial loss for his business. We further find that the two lists of expenses provided by the applicant and the relating bills and statements fail to establish the tenuous financial situation that counsel indicates the applicant's spouse would face in the applicant's absence.

No submitted evidence establishes that the applicant contributes in any way to the monthly gross income of \$10,000-\$15,000 that she indicates is generated by her spouse's business and the business expenses she lists do not exceed this income. Further, the AAO does not find the record to document a significant portion of the family's monthly personal financial obligations. Although the applicant indicates that her spouse pays \$1,200 each month in child support, we do not find the record to document this expense. The record contains a Notice of Entry of Judgment, filed on July 7, 2005, which establishes the applicant's spouse's divorce from his first wife. The judgment is not, however, accompanied by a court order, custody agreement or copies of monthly support checks that would demonstrate his child support obligation or the amount of that obligation. We also note that the record does not document that the applicant's spouse is legally obligated to pay the property tax and home insurance bills for his prior wife's home, which are included in the list of the applicant's listing of the family's monthly personal expenses. Although the record includes a county tax assessment and home insurance statement addressed to the applicant's spouse and his former wife, there is nothing in the record to indicate that the applicant's spouse is legally obligated to pay these bills as a result of his divorce settlement. Accordingly, based on the evidence of record, the AAO cannot conclude that the applicant's spouse would experience financial hardship in the applicant's absence.

In that the record lacks sufficient documentary evidence to support the claims of the emotional and financial hardship, the AAO finds that the claimed hardship factors, even when considered in the aggregate, do not establish that the applicant's spouse would suffer extreme hardship if she is removed and he remains in the United States without her.

To establish that relocation to Guatemala would result in extreme hardship for the applicant's spouse, counsel states that the applicant has lived in the United States for more than 30 years, has never been to Guatemala and would have no family there, with the exception of the applicant. Counsel also asserts that the applicant's spouse cannot relocate as he is required to pay \$1,500 per month in child support for his three U.S. citizen children from his prior marriage and that he also pays a significant amount of their expenses each month. She maintains that he would not be able to meet his obligations toward his children if he relocated to Guatemala as he would not be able to find employment paying a living wage.

In his November 2, 2009 statement, the applicant's spouse indicates that he has lived in the United States for more than 30 years and that he owns and operates a machine shop by himself. He does not, however, address the possibility of moving to Guatemala or indicate what hardships he would face as a result of relocation.

As previously discussed, although the applicant has submitted a list of personal expenses that indicates her spouse makes a monthly child support payment of \$1,200, there is no documentary evidence in the record that establishes the applicant's spouse's financial obligation to children from his prior marriage. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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). Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *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)). Further, while the AAO notes that country conditions materials submitted for the record indicate that 56.2 percent of the people of Guatemala live below the poverty line, general economic or country conditions in an alien's native country do not establish extreme hardship in the absence of evidence that the conditions would specifically impact the qualifying relative. *Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996) (citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir. 1985)). In the present case, the applicant's spouse owns and operates a machine shop, employment that requires him to have unique knowledge and skills. The record contains no documentary evidence that indicates that such knowledge and skills would not be marketable in Guatemala and allow the applicant's spouse to obtain employment that would adequately support him and his family.

The AAO acknowledges the applicant's long-term residence in the United States, his unfamiliarity with Guatemala and his lack of family ties in Guatemala. However, the record fails to demonstrate that these hardships, even when considered in the aggregate, exceed those normally created by relocation. Accordingly, the applicant has not established that relocation would result in extreme hardship for her spouse.

As the record does not demonstrate that the applicant's spouse would suffer extreme hardship as a result of her inadmissibility, she has failed to establish eligibility for a waiver of inadmissibility under section 212(i) of the Act. 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 proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility is entirely on the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.