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



U.S. Citizenship  
and Immigration  
Services

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DATE: **MAY 15 2012**

Office: SAN FRANCISCO, CA

FILE: [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 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rife  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director (FOD), San Francisco, California. 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 Taiwan 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 sought to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen 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 her U.S. citizen spouse.

On February 9, 2010 the FOD denied the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, concluding that the applicant failed to demonstrate that her qualifying relative would experience extreme hardship should she be deported. *Decision of the Field Office Director regarding the Form I-601 application.* The FOD also denied the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, finding the applicant inadmissible under section 212(a)(6)(C)(i) of the Act.<sup>1</sup> *Decision of the Field Office Director regarding the Form I-485 application,* dated February 9, 2010. On March 10, 2010, the applicant appealed the FOD's denial of the Form I-601. *Form I-290B, Notice of Appeal or Motion.* On March 10, 2010, the applicant also filed a motion to reopen the FOD's denial of the Form I-485 application, requesting that the applicant's adjustment of status application be changed from denied to pending status. *Form I-290B, Notice of Appeal or Motion.* The AAO notes that the applicant's motion to reopen the adjustment application remains pending.

On appeal, counsel contends that the applicant is not inadmissible under section 212(a)(6)(C)(i), because she did not make a material misrepresentation during her June 27, 2008 entry into the United States with a B2 nonimmigrant visa. In the alternative, counsel claims that the applicant's spouse would suffer extreme hardship if the applicant is denied admission to the United States. *See Brief in Support of Appeal,* dated March 9, 2010.

The evidence of record includes, but is not limited to: counsel's brief; statements from the applicant and her spouse; medical records of the applicant's father-in-law; financial documents; and identification and relationship documents. The entire record was reviewed and all relevant evidence considered in reaching 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

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<sup>1</sup> The FOD initially denied the applicant's adjustment application on December 23, 2009. On February 9, 2010, he reopened it on a Service motion and denied it that day after denying the applicant's waiver application.

admission into the United States or other benefit provided under this Act is inadmissible.

The applicant, a native and citizen of Taiwan, married her husband on March 12, 2008 in San Francisco, California while in the United States as a nonimmigrant visitor. In April 2008, the applicant and her husband filed a Form I-130, Petition for Alien Relative; a Form I-485, application to adjust status; and a Form I-131, Application for Travel Document (advance parole). Before her application for advance parole was approved, the applicant returned to Taiwan for a family emergency. On June 27, 2008, the applicant returned to the United States and was admitted as a nonimmigrant visitor. The FOD determined that the applicant abandoned her adjustment application and denied it accordingly.<sup>2</sup> *Decision of the Field Office Director*, dated September 29, 2008. U.S. Citizenship and Immigration Services (USCIS) records show that when questioned at the port of entry about the purpose of her travel by a U.S. Customs and Border Protection officer, the applicant said she was coming to visit a friend. The FOD concluded that the applicant willfully misrepresented herself as a nonimmigrant visitor to a U.S. government official on June 27, 2008 while she was the beneficiary of a then-pending alien relative petition and application to adjust status to permanent residency and found her inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant filed a waiver application on December 17, 2009. On February 9, 2010, the FOD denied the applicant's waiver application, concluding that the applicant failed to demonstrate that her qualifying relative would experience extreme hardship should she be deported.

On appeal, counsel contends that the applicant is not inadmissible because nothing in the record indicates that at the port of entry, the applicant was asked whether she had a husband in the United States or if she had an immigration application pending, therefore, she "neither admitted nor denied that she was returning to live with her husband and she had pending immigrant application or petition." Counsel states that it is improper for the FOD to assume the applicant knew or should have known the law that would be applied to her departure without advance parole and therefore, the applicant willfully misrepresented certain facts. Counsel states that the applicant answered the inspector's question "based on her knowledge about the tourist visa." Counsel further contends that the applicant was in possession of a valid tourist visa and therefore, did not need to make a misrepresentation to procure admission to the United States.

Section 101(a)(15)(B) of the Act, 8 U.S.C. § 1101(a)(15)(B), defines a nonimmigrant visitor as "an alien . . . having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure." An intent to immigrate to the United States is inconsistent with the Act's definition of a nonimmigrant visitor. For that reason, USCIS has long considered entry into the United States as a nonimmigrant visitor with a preconceived intent to establish permanent residence to be a negative factor in discretionary determinations. *See Matter of Ibrahim*, 18 I&N Dec. 55, 57 (BIA 1981) (reaffirming *Matter of Garcia-Castillo*, 10 I&N Dec. 516 (BIA 1964)). In this case, the applicant entered the United States as a nonimmigrant on June 27, 2008, stating the purpose of her travel was "to visit a friend." The AAO finds counsel's contention that the applicant's response is not a misrepresentation because the inspector at the port of entry did not specifically ask whether she

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<sup>2</sup> The applicant filed another adjustment application, Form I-485, on October 17, 2008.

had a husband in the United States and a pending adjustment application unpersuasive. Counsel provides no legal authority in support of his contention.

Section 212(a)(6)(C)(i) of the Act may be violated by committing fraud or willfully misrepresenting a material fact. *See Mwongera v. INS*, 187 F.3d 323, 330 (3d Cir. 1999); *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). Fraud consists of “false representations of a material fact made with knowledge of its falsity and with intent to deceive.” *See Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). 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.” *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*. In *Matter of S- and B-C-* 9 I&N Dec. at 447, the Attorney General held that a misrepresentation made in connection with an application for a visa, or at the time of entry into the United States, is material if (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien’s eligibility and which might have resulted in a determination of exclusion. At the time of her June 27, 2008 entry, the applicant was married to a U.S. citizen and had a pending adjustment application. The inspector at the port of entry asked the applicant the purpose of her travel, and in her response, the applicant did not disclose that her purpose was to live with her U.S. citizen husband. The applicant misrepresented a material fact because she cut off a line of inquiry into her intent to immigrate, which may have resulted in her exclusion. The applicant was not in possession of an approved advance parole document and she abandoned her adjustment application. The record clearly demonstrates that the applicant was an intending immigrant and not eligible to enter the United States on a nonimmigrant-visitor visa. Therefore, the AAO finds the applicant to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for having sought admission to the United States through fraud or the willful misrepresentation of a material fact.

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.

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*, 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 qualifying relative is her spouse, who is a U.S. citizen.

The AAO now turns to the question of whether the applicant in the present case has established that her qualifying relative would experience extreme hardship as a result of her inadmissibility.

Counsel states that the applicant and her spouse live with her in-laws and share financial expenses in return for room and board. According to counsel, the applicant's spouse owns a small business and his earnings are not enough for him to be her sole financial sponsor. To alleviate her husband's financial burden, the applicant does not work and takes care of her father-in-law, who had a stroke and suffers from heart disease. Counsel also states that the applicant's spouse has been living in the United States nearly 25 years, and his parents and brother are U.S. citizens. Counsel asserts that the applicant's spouse has never visited Taiwan and if he were to relocate, he would lose his business and would be unable to find gainful employment.

The applicant's spouse states that his father suffered a stroke and needs 24-hour care with which the applicant assists. He states that his employment situation does not allow him to hire a full-time care giver or stay at home to care for him. The applicant's caring for his father relieves some of his financial burden.

The applicant states that her father-in-law has limited mobility on his left side of his body and requires full-time care. Because both her husband and her mother-in-law work and are unable to hire a caregiver, she cares for her father-in-law and provides moral support for her husband and his family.

The record contains a two-page medical document for the applicant's spouse's father indicating that he is diagnosed with congestive heart failure, and he requires assistance with his mobility and personal care. Documents also indicate that his mental status can be alert, confused, or forgetful.

The record also contains copies of pay checks and an employment verification letter for the applicant's spouse indicating his monthly income was \$2,000 in 2008.

The AAO concludes that the applicant has failed to demonstrate extreme hardship to her qualifying spouse if he remains in the United States. The applicant's financial evidence does not demonstrate the applicant's spouse's current income and obligations in the United States with sufficient detail to permit evaluating the extent of his financial hardship. Though the applicant's caregiving services may lessen his financial burden, the record lacks evidence demonstrating the cost of his father's care and whether his father receives any other assistance. The record also lacks evidence detailing the type of care the applicant's father-in-law needs. The medical evidence

submitted does not demonstrate the level of dependence he has in his daily activities and whether his limitations are permanent. The record also does not demonstrate that the applicant's mother-in-law is unable to financially provide for the care of her husband. Moreover, the applicant's spouse has a brother, however, it is unclear whether he assists their parents either financially or in the care of their father. The applicant states that her spouse is "emotionally drained." It is unclear the type emotional problems the applicant's spouse is experiencing and how his emotional state is affecting his daily living. The assertions of the applicant and his spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions are insufficient proof of hardship. *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 generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). In the absence of supporting evidence, the AAO will not speculate on the applicant's spouse's emotional and financial status and therefore concludes that the applicant has failed to establish that her spouse would experience extreme hardship due to separation.

The AAO finds that the applicant has also failed to demonstrate that her spouse would experience extreme hardship if he joins her in Taiwan. The record does not include evidence supporting counsel's contention that the applicant's spouse would be unable to find gainful employment in Taiwan. Without documentary 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 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO notes that that the applicant's spouse has family ties to the United States and therefore, he would experience some level of emotional hardship if he were to relocate to Taiwan; however, the record does not demonstrate his emotional hardship would rise to an extreme level.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the applicant has not established eligibility for a waiver of inadmissibility under section 212(i) of the Act. Because the applicant is 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 remains entirely with 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.